Board Meeting Agenda
Lake Travis Independent School District Board of Trustees

A meeting of the Board of Trustees of Lake Travis Independent School District will be held May 21, 2025, beginning at 6:00 PM in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, TX 78734.

The subjects to be discussed or considered, or upon which any formal action may be taken are listed below. Items do not have to be taken in the order shown on this agenda.

Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

If, during the course of the meeting covered by this agenda, the Board should determine that a closed session of the Board should be held or is required in relation to any item included on this agenda, then such closed session as authorized by Section 551.001 et seq of the Texas Government Code (the Open Meetings Act) will be held by the Board at that date, hour and place given in this agenda or as soon after the commencement of the meeting covered by this agenda as the Board may conveniently meet in such closed session concerning any and all subjects and for any and all purposes permitted by Sections 551.071 – 551.084, inclusive, of the Open Meetings Act.

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10. **Closed Session - Trustees will recess into Closed Session as permitted by the Texas Government Code 551.001 et. seq**.

Section 551.071 - For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee.

Section 551.076 – For the purpose of discussing a security audit.

11. Consideration Item
A. Election of Board of Trustees Officers
B. Other Items Arising from Closed Session
12. Adjournment

AGENDA ITEM ACTION SHEET

AGENDA ITEM
2025 Texas Elementary Art Meet

RECOMMENDED ACTION
Special Recognition

RATIONALE
Twenty-seven students representing 6 Lake Travis ISD elementary school campuses received outstanding honors April 12 as part of the 2025 Texas Elementary Art Meet, or TEAM. Sponsored by the Texas Art Education Association, TEAM is the elementary level competition of the Visual Arts Scholastic Event, or VASE.

Bee Cave Elementary School:
- **Agastya Anigundi** - 4th Grade
- **Victor De La Cruz** - 5th Grade
- **Heidi Noeding** - 5th Grade
- **Nayirah Rahman** - 3rd Grade

Lake Pointe Elementary School:
- **Isaac Cobb** – Kinder
- **Sean Dashtera** - 2nd Grade
- **Addison Horwath** - 5th Grade
- **Ayra Muntaha** - 2nd Grade

Lake Travis Elementary School:
- **Novelle Arguello** - 4th Grade
- **Isla Cummings** - 2nd Grade
- **Bac Le** - 5th Grade
- **Gabriel Urqiuza** - 5th Grade

Lakeway Elementary School:
- **Duke Edgar**** - 2nd Grade
- **Beau Ferguson** - Kinder
- **Sawyer Lee**** - 5th Grade
- **Myra Schleiss** - 3rd Grade
- **Ellie Speed** - 4th Grade
- **Wyatt Williams** - 1st Grade

Serene Hills Elementary School:
- **Hansika Bandi** - 4th Grade
- **Thessaly Bass** - 2nd Grade
- **Gala Garcia** - Kinder
- **Luna Pearl Parkman** - 3rd Grade
- **Sander Solaas** - 5th Grade
- **Celia Walta** - 1st Grade

West Cypress Hills Elementary School:
- **Camryn Brown** - Kinder
- **Alina Montemarano** - 1st Grade
- **Lilly Rocha**** - 4th Grade

**denotes student earned highest rating of 3 and will receive medal and certificate from TEAM*

***denotes student artwork placed among the top 10% of all entries*

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Shannon Gill - Director of Fine Arts
Kari Pardington - Art Teacher, Bee Cave Elementary School
Alissa Tilford - Art Teacher, Lake Pointe Elementary School
Sarah Reeves - Art Teacher, Lake Travis Elementary School
Kristen Blauvelt - Art Teacher, Lakeway Elementary School
Haley Blanton - Art Teacher, Serene Hills Elementary School
Megan Dunn - Art Teacher, West Cypress Hills Elementary School
Marco Alvarado - Executive Director of Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
2025 State Junior Visual Arts Scholastic Event (Jr. VASE)

RECOMMENDED ACTION
Special Recognition

RATIONALE
A program of the Texas Art Education Association, the Junior VASE competition is a visual arts event recognizing exemplary student achievement for middle school student artwork in grades 6-8. The regional event is the culminating event for Junior VASE. Medals are awarded according to a rating of 4 in each division. Artwork in each division receiving a 4 is judged again, with the top 10% earning a Platinum Medal.

The following students from Bee Cave, Hudson Bend, and Lake Travis middle schools earned the highest rating (4 - Excellent) and corresponding awards at the Junior VASE Region 13-N competition held May 3 at Pearson Ranch Middle School in Round Rock:

STUDENT - CAMPUS	AWARD	STUDENT - CAMPUS	AWARD
Samaira Adarsh - BCMS	Platinum	**Henry Roberts** - HBMS	Platinum
Sienna Banda - BCMS	Platinum	**Zoe Salabor** - HBMS	2 Platinum Medals
Milo Bellaire - BCMS	Platinum	**Ally Solominski** - BCMS	Platinum
Brigitte Bice - LTMS	Platinum	**Eva Tomasik** - HBMS	Platinum
Kinley Carroll - BCMS	Platinum	**Vivian Teske** - BCMS	Platinum
Ash Crane - BCMS	Platinum	**Piper Wood** - HBMS	Platinum
Rey Harrington - HBMS	2 Platinum Medals	**Ashley Wooledge** - BCMS	Platinum
Cassidy Jerdon - HBMS	Platinum	**Lexi Wooledge** - BCMS	Platinum
Chloe Manthorpe - HBMS	Platinum	**Natalie Wu** - BCMS	Platinum
Vibha Rajiv - BCMS	Platinum		

Middle school art teachers are **Sidney Hoffman** and **Shawna Martin** (Bee Cave), **Amanda Chambers** and **Robin Garcia** (Hudson Bend), and **Araceli** Giles (Lake Travis).

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Shannon Gill - Director of Fine Arts
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis High School - 2025 State Visual Arts Scholastic Event (VASE)

RECOMMENDED ACTION
Special Recognition

RATIONALE
On March 1, our talented Lake Travis High School Visual Arts students competed for the Texas Art Education Association Regional VASE, better known as the Visual Arts Scholastic Event, at Georgetown High School.

VASE is a statewide curricular competition and the only art event of its kind in the nation. Students are given the opportunity to bring artwork created in class to a regional event where they are interviewed by a certified juror. The juror then evaluates the artwork based on a standard rubric as well as the students' understanding of the process involved in the development of their work.

LTHS had a total of 163 students earning regional medals for their outstanding artwork, from which 137 pieces advanced to state competition from our region (13 North). LTHS claimed 28 of those coveted spots, of which three received the prestigious Gold Seal Award:

Student	Award	Student	Award
Charlotte Ahrendt	All State Medal, Gold Seal	**Rachel Looper**	All State Medal
Sofia Ayala	All State Medal	**Mateo Lopez**	All State Medal
Braelyn Bagley	Advanced to State	**Emily Mikolaycik**	All State Medal
Lloyd Baker	All State Medal	**Regan Moore**	All State Medal
Presley Blake	All State Medal	**Hazel Papandrea**	Gold Seal
Haydyn Davis	All State Medal	**Kyla Partin**	All State Medal
Ryden Frerichs	All State Medal	**Joselyn Ramirez**	All State Medal
Audrey Fulton	Advanced to State	**Claire Richardson**	Advanced to State
Sydney Hartnagel	All State Medal	**Kyler Shackelford-Rosado**	All State Medal
Rayna Jiang	All State Medal	**Madison Sherman**	All State Medal
Alana Jimenez	Advanced to State	**Gabby Sicat**	All State Medal
Aanya Kant	All State Medal	**Abby Soliday**	Advanced to State
Avery Kinas	All State Medal	**Caitlyn Vandermeer**	Gold Seal

Teachers **Brianne Get**, **Kayla Koslow, Bohye Na**, **Jennifer Nowzaradan**, **Caleigh Taylor**, and **Diane Wrinkle** comprise the Lake Travis High School art department faculty.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Shannon Gill - Director of Fine Arts
Debbie Garinger - Lake Travis High School Principal
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis High School - HOSA Future Health Professionals 2025 State Leadership Conference

RECOMMENDED ACTION
Special Recognition

RATIONALE
Six students representing Lake Travis High School competed at the HOSA Future Health Professionals 2025 State Leadership Conference held April 29-May 1 in Round Rock.

Formerly known as Health Occupations Students of America, HOSA is an international career and technical education student-led organization recognized by the U.S. Department of Education and the Department of Health and Human Services. HOSA's mission is to empower future health professionals to become leaders in the global health community, through education, collaboration, and experience.

Lake Travis High School students participating at state-level competition included:

- **Roberto Buitrago** - Physical Therapy
- **Natalie Fritsche** - Personal Care
- **Aniqa Manesiya** - Health Career Display
- **Vaishnavi Senthil** - Medical Spelling
- **Mitzi Steigerwald** - Nursing Assisting
- **Shriya Suryakumar** - Health Career Display

With her 1st Place win, Vaishnavi has qualified to compete at the HOSA International Leadership Conference to be held June 18-21 in Nashville.

Additionally, membership in LTHS HOSA has seen incredible growth—nearly tripling in size from last year. As a result, a second school chapter was established. This success reflects both the hard work of our students and the excellent leadership of LTHS HOSA advisor, **Andrea Rivera**.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Lana Stone - CTE Coordinator
Debbie Garinger - Lake Travis High School, Principal
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis High School - SkillsUSA 2025 State Leadership & Skills Conference

RECOMMENDED ACTION
Special Recognition

RATIONALE
SkillsUSA is an extension of the Career and Technical Education program at Lake Travis High School where students compete in various events in their career pathways. Students earn recognition on district, state, national, and international levels. In its fourth year, 35 out of 60 students from Lake Travis High School SkillsUSA earned gold, silver and bronze awards at the state meet held April 2-5 in Corpus Christi.

Students who earned first place at state competition qualified to participate in the SkillsUSA 2025 National Leadership & Skills Conference to be held June 23-27 in Atlanta:

- Related Technical Math: **Pedro Alvarez-Gutierrez**
- Principles of Engineering: **Adam Hellinger**
- Health Occupations Portfolio: **Shreyas Durga**
- Electronics Technology: **Luka Vukmirica**
- Career Pathway-Industrial and Engineering: **Genevieve Baker**, **Jaida Nichols**, and **Ayushi Sampath**
- Career Pathway-Business and Information Technology: **Austin Handley**, **Aayush Mohan**, and **Sawyer Patton**
- Community Action: **Will Carr** and **Luka Vukmirica**

Other impressive accolades at the state competition include the following:

- 2nd Place - Quiz Bowl: **Pedro Alvarez-Gutierrez**, **Blake Anderson**, **Shreyas Durga**, **Syon Kapoor**, **Shloak Nagda**, **Spencer Prow-Nemeroff**, and **Prakhar Sinha**
- 2nd Place - Mobile Robotics: **Leo Block** and **Preston Charap**
- 2nd Place - Customer Service: **Meera Menon**
- 2nd Place - Web Design: **Caleb Karr** and **Joshua Karr**
- 2nd Place - Interactive Game Design: **Evan Mallows** and **Abby Soliday**
- 2nd Place - Electronics Technology: **Vimal Mokkapati**
- 3rd Place - Mobile Robotics: **Olivia Han** and **Grayson New**
- 3rd Place - Robotics Urban Search and Rescue: **Abhinav Akasapu** and **Nethra Mandalapu**
- 3rd Place - Pin Design: **Sofia Dunkerley**
- 3rd Place - Career Pathway Health Science: **Anay Ganta**, **Abigail Paz**, and **Ashrita Surabi**

- Best of Show: Architecture Model/Innovative - **Daryna Singh**
- Top 5 Entrepreneurship Team "Helioclear" – **Ava Barouh**, **Brant Doggett**, **Nitika Mohnet**, and **Kent Vestal**

Terri Jacobs serves as the faculty advisor for Lake Travis High School SkillsUSA.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Lana Stone - Career and Technical Education Coordinator
Debbie Garinger - Lake Travis High School Principal
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis High School Track & Field - 2025 UIL State Meet

RECOMMENDED ACTION
Special Recognition

RATIONALE
Lake Travis High School made its mark at the 2025 UIL Track and Field State Meet held May 1-3 at the University of Texas. The following student-athletes placed as follows:

- Girls Long Jump - 6A
  Isabella Famiglietti (8th Place)

- Boys Shot Put - 6A
  Ben Duncum (7th Place)

- Boys 400M Dash - 6A
  Abram Reagan (3rd Place - bronze medal)

- Girls 4 x 200M Relay - 6A
  Isabella Famiglietti, **Jordan Lowman**, **Lily Mason**, and **Lyla Tiantawach** (9th Place)

Lake Travis High School Track and Field is coached by Aaron Macik and he is assisted by Taylor Brown, Anna Gamm, Lucus Gingold, Taylor Latimer, Courtney Lord, Jerrick Massenburge, Omar Ochoa, Rudy Ortiz, Julie Salem, Barrett Shirey, and Sean Trombly.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Hank Cater - Director of Athletics/Football Head Coach
Debbie Garinger - Lake Travis High School Principal
Marco Alvarado - Executive Director of Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis High School - 2025 UIL 6A Boys and Girls Golf State Tournaments

RECOMMENDED ACTION
Special Recognition

RATIONALE
Lake Travis High School is proud to recognize its Boys and Girls Golf teams for team individual achievement at the 2025 UIL 6A Boys and Girls Golf State Championships held in late April and early May at the White Wing Golf Club in Georgetown.

The girls' team placed third overall and is comprised of **Kaleigh Babineaux**, **Paris Dufresne**, **Grace Hall**, **Audrey McIntyre**, and **Faith Principato**. Lake Travis Girls Golf is coached by **Jonathan Coats**.

The boys' team also placed third overall and is comprised of **Mackey Beckett**, **Andre Follmer**, **Bennett Kuhns**, **Tyler Neidel**, and **Nicholas Papacharalambous**, Lake Travis Boys Golf is coached by **Dustin Payne**.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Hank Carter - Director of Athletics
Debbie Garinger - Lake Travis High School Principal
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
LT High5 Award presented by High5 – Round 5 Recipients

RECOMMENDED ACTION
Special Recognition

RATIONALE
Five times a year, three district employees will be presented with the "LT High5 Award presented by High5." The award recognizes outstanding service beyond self that positively impacts fellow colleagues, students, parents, and/or the Lake Travis community.

All Lake Travis ISD employees are eligible for this award. There is no official nomination form. At any time throughout the school year, any Lake Travis ISD employee may nominate another employee for the award by simply sending an email directly to the District's Executive Director for Communications & Community Relations. Nominees are reviewed and award recipients are selected by the Superintendent's Cabinet.

The following employees are recipients of the third round of the LT High5 Award presented by High5:

- **Gerald Deming –** Safety & Training Specialist, Transportation
- **Cindy Scott –** SPED Aide, Rough Hollow Elementary School
- **Amy Smith** – 2nd Grade Teacher, Serene Hills Elementary School

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
2025 - 2026 Campus Teacher of the Year Award Recipients

RECOMMENDED ACTION
Special Recognition

RATIONALE
The Administration is proud to recognize the 2025-2026 Teacher of the Year recipients. Teachers were nominated and selected by their campus peers. The criteria required that recipients be an exceptionally dedicated, knowledgeable, and skilled teacher who plans to continue in an active teaching status; inspires students of all backgrounds and abilities to learn; has the respect and admiration of students, parents, and colleagues; plays an active and useful role in the community, as well as in the school; and be poised, articulate, and possess the energy to withstand a taxing schedule.

The 2025-2026 Campus Teacher of the Year recipients are:

- **Bee Cave Elementary School — Stephanie Price (Kindergarten)**
- **Lake Pointe Elementary School — Stacie McBride (3rd Grade)**
- **Lake Travis Elementary School — Amy Anderson (Prekindergarten)**
- **Lakeway Elementary School — Kristen Blauvelt (Art)**
- **Rough Hollow Elementary School — Jody Strauss (2nd Grade)**
- **Serene Hills Elementary School — Karma Ezell (5th Grade)**
- **West Cypress Hills Elementary School — Christina Otwell (Special Services)**
- **Bee Cave Middle School — Leslie Sparks (Social Studies)**
- **Hudson Bend Middle School — Abigail Walker (ELA)**
- **Lake Travis Middle School — Rachel Croci (Social Studies)**
- **Lake Travis High School — Brandon Pierce (English)**

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Susan Fambrough - Assistant Superintendent of Human Resources
Marco Alvarado – Executive Director of Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis ISD School Board Trustee John Aoueille

RECOMMENDED ACTION
Special Recognition

RATIONALE
The Lake Travis Independent School District extends its heartfelt appreciation to Mr. John Aoueille for his outstanding service and leadership as a member of the Board of Trustees.

Appointed in July 2015 to fill an unexpired term and subsequently elected to a full three-year term in May 2016, Mr. Aoueille has served the Lake Travis ISD community with distinction. Over the course of nearly 10 years, he has been a visible and vocal advocate for students, a strong supporter of district leadership and staff, and a champion for continuous improvement across our schools.

During his tenure, Mr. Aoueille has helped guide the district through a period of unprecedented growth, as student enrollment nearly doubled. He played a vital role in supporting strategic efforts to manage this expansion, including the successful passage of bond programs in 2017, 2022, and 2023 totaling more than $1 billion. These investments have led to new campuses, modernized facilities, and enhanced learning environments. In addition, Mr. Aoueille supported voter-approved tax rate elections in 2017 and 2021, generating approximately $5 million in annual state revenue to benefit our schools and students.

He and his wife Chandra are proud parents of four Lake Travis High School graduates: Keaton, Jackson, Connor, and Mia. As Mr. Aoueille concludes his service on the Board in 2025, we extend our deepest gratitude for his time, energy, and dedication to our district.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Steve Flores, Ph.D. - Interim Superintendent
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Oath of Office- Board of Trustees for Lake Travis Independent School District Place 3, Place 4 and Place 5

RECOMMENDED ACTION
Administer the Oath of Office to the Board of Trustee candidates Erin Archer, Jonathan Bove and Kristen Woodcock.

RATIONALE
Per Texas Gov't Code, Section 601.005, all state, county or local officers, other than the governor, lieutenant governor and members of the legislature, who qualify for office, are commissioned by the governor. The Secretary of State performs ministerial duties to administer the commissions issued by the governor, including confirming that officers are qualified prior to being commissioned. The Oath of Office may be administered by anyone authorized under the provisions of Chapter 602 of the Texas Government Code. Commonly used officials include notaries public and judges.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Chad Crowson – General Counsel
Suzanne Kelbaugh – Election Official

ATTACHMENTS
1. Form 23-2-Oath of Office for Place 3 (Erin Archer)
2. Form 23-2-Oath of Office for Place 4 (Jonathan Bove)
3. Form 23-2-Oath of Office for Place 5 (Kristen Woodcock)

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Campus Presentation–Bee Cave Middle School

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
The purpose of this presentation is to provide the Board of Trustees and the community with a snapshot of the impactful work being done by Bee Cave Middle School. This includes highlighting significant achievements by students, staff, and families that contribute to the overall success of the school community.

The expected outcome of this presentation is to strengthen the connection between the campus and the community and give the Board of Trustees the opportunity to engage in conversations with the campus principal that support the success of all stakeholders.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Stefani Vickery - Assistant Superintendent of Curriculum & Instruction
Melanie Beninga- Principal, Bee Cave Middle School

ATTACHMENTS
Presentation

MEETING DATE
May 21, 2025

Lake Travis Showcase

Bee Cave Middle School

May 21, 2025

Principal: Melanie Beninga

All About Us

Year the school opened: 2019

# of students : 862

# of staff : 74

Specialized Programs at BCMS: SDC (Social Development) Class and G3 (Get Ready, Get Set, Go) 22

Mission Statement: Our mission is to create an innovative and inclusive learning community empowering every student to reach their full potential through fostering a dynamic educational environment that recognizes and values unique strengths, talents, and needs of each student.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

Campus Goal

BCMS will leverage the collective expertise of its staff through three dedicated, school-wide task forces focused on key areas of school improvement:

- Enhancing Instructional Strategies 23
- Improving Student Behavior
- Fostering a Positive School Culture

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

Campus Spotlight– Student Clubs

BCMS introduced Friday Club Time—an initiative driven by student interests—to strengthen the “We Belong” component of the district’s strategic plan. This dedicated time fosters inclusivity, builds community, and allows students to explore their passions while connecting with peers and staff in a supportive environment.

Campus Spotlight–Focus on Students

Campus Spotlight– The School Culture Task Force

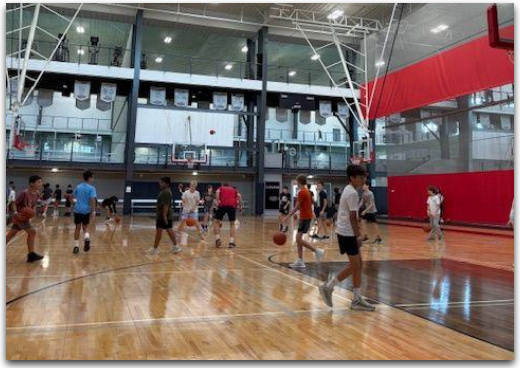
The School Culture Task Force is a collaborative team of staff dedicated to fostering a positive, inclusive, and supportive learning environment. The task force works to identify strengths and challenges within the school culture and develops strategies that promote respect and a strong sense of belonging for all.

Campus Spotlight–Focus on Educators

Campus Spotlight–Focus on Families

The BCMS PTO Partnership plays a vital role in recognizing and celebrating student achievements throughout the year. Through events, awards, and special acknowledgments, the PTO helps foster a positive school environment where students feel valued and motivated to succeed.

Campus Spotlight–Focus on Families



Questions?

AGENDA ITEM ACTION SHEET

AGENDA ITEM
End of the Year Universal Screener Data K-5

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
LTISD administers end of the year universal screeners to every K-5 student in reading and math. NWEA MAP Growth (Measures of Academic Progress) data for grades K-5 math and 3-5 reading, and Grades K-2 mCLASS TX Edition data for reading will be shared.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Stefani Vickery - Assistant Superintendent for Curriculum & Instruction
Dr. Lyndsae Benton - Executive Director of Curriculum & Instruction
Kathy Burbank - Director of Accountability & Achievement

ATTACHMENTS
Presentation

MEETING DATE
May 21, 2025

End of Year Universal Screener Data

May 21, 2025

Universal Screeners

Purpose:

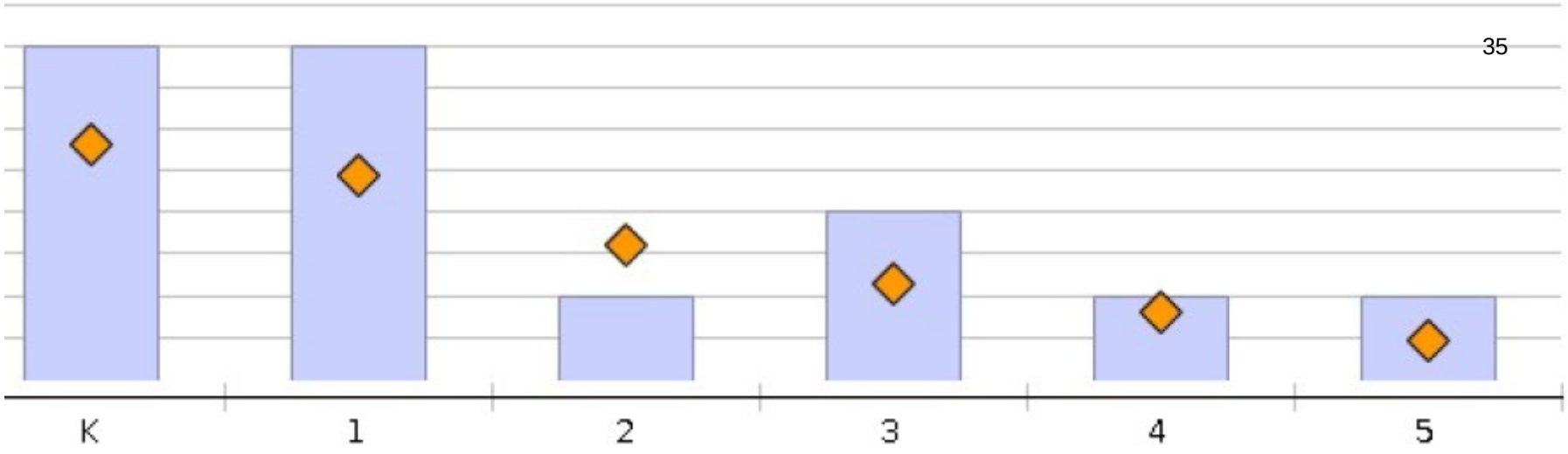
Provides the data educators need to predict gaps in learning in individual students, classrooms, and grade levels. Teachers can provide extra practice and additional, intentional instruction right away, when the learning gaps are still small, to prevent larger learning gaps later.

2024-2025 School Year, the district administered NWEA MAP Growth & Amplify mCLASS.

NWEA™ (Northwest Evaluation Association) - Measures of Academic Progress (MAP®)

- Universal Screener designed to support growth
- Aligned to the Texas Essential Knowledge and Skills (TEKS)
- Given 3 times a year
  - BOY - September 3-13
  - MOY - January 13-24
  - EOY – April 28-May 9
- Available in English and Spanish for grades K-5
- Used as one indicator for progress monitoring for MTSS and Accelerated Instruction
- One indicator as a projection of performance on STAAR
- Administered to grades K-5 in Math and 3-5 in Reading

MAP Growth Math



Bar is the observed Growth.
Diamond is the Grade-Level Norms Projected Growth

MAP Growth Reading

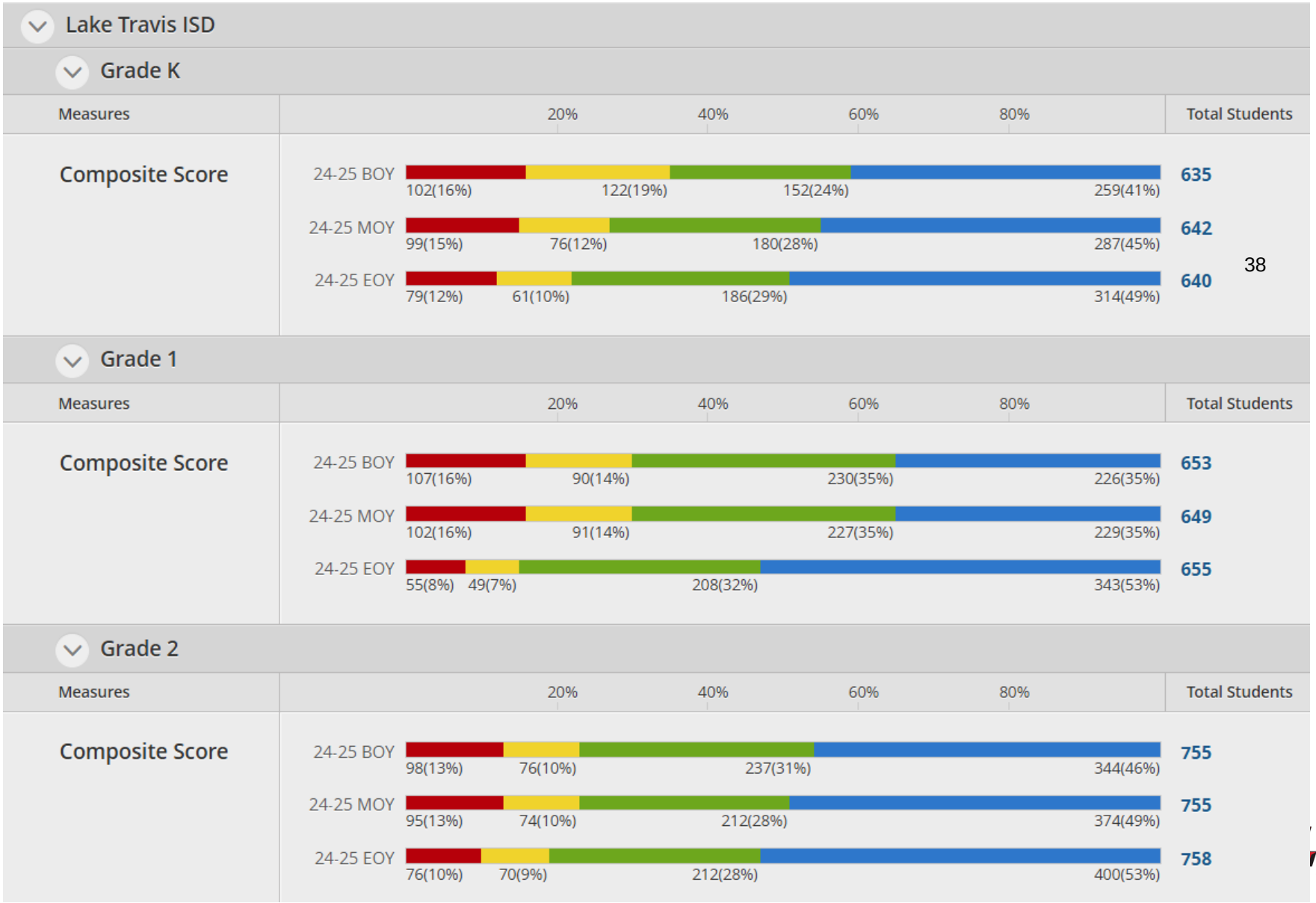
Bar is the observed Growth.
Diamond is the Grade-Level Norms Projected Growth

mCLASS® TX Edition

- Universal Screener for K-2 Reading
- Amplify
- DIBELS ® (Dynamic Indicators of Basic Early Literacy Skills) University of Oregon
  - Letter Naming Fluency
  - Phonemic Segmentation Fluency
  - Nonsense Word Fluency
  - Word Reading Fluency
  - Oral Reading Fluency
  - Maze - 2nd grade
  - Composite Score
- Required PEIMS Submission - Early Reading Inventory (ERI)
- Required PEIMS Submission - Early Childhood Data System (ECDS)
- Required PEIMS Submission - Dyslexia Screener

BOY - Sept 3-13
MOY - Jan 13-24
EOY - Apr 28-May 9

mCLASS Reading K, 1st & 2nd



Questions?

AGENDA ITEM ACTION SHEET

AGENDA ITEM
CollegeBoard SAT School Day

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
LTISD administers the College Board SAT to all Juniors during the school day. This year it was administered on March 26, 2025. House Bill 3 (HB 3), which passed in the 86th legislative session, permitted the state to reimburse districts for the amount of fees paid by the district for the administration of a college preparation assessment. This means that eligible students may take one SAT, ACT, or TSIA in the spring of their junior year or during their senior year for free (at state cost)! As a result, TEA entered a contract with the College Board to negotiate a statewide rate for SAT School Day.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Stefani Vickery - Assistant Superintendent for Curriculum & Instruction
Dr. Lyndsae Benton - Executive Director of Curriculum & Instruction
Kathy Burbank, Director of Accountability & Assessment

ATTACHMENTS
Results

MEETING DATE
May 21, 2025

Lake Travis High School

SAT School Day Spring 2025 - March 26, 2025

State Partnership

The Texas Education Agency offers school districts reimbursement for a college preparatory assessment, such as the SAT, taken during the spring of a student's junior year or anytime during their senior year. TEA has partnered with College Board to offer a discounted rate for SAT School Day for Texas public school students in eligible grade levels.

School Day Multi-year Data		Number of Participants	Mean Score
Lake Travis High School	March 2025	838	1125
	March 2024	815	1098
	March 2023	731	1107
	March 2022	749	1116
State of Texas	March 2025	247,063	954
	March 2024	255,445	943
	March 2023	214,775	955
	March 2022	234,873	957
Global Testers	March 2025	915,267	964
	March 2024	1,284,329	948
	March 2023	637,990	957
	March 2022	1,203,377	959

Total

	# of Testers	Score Distribution	Mean Total Score (400-1600)
School	838		400 **1125** 1600
District	838		400 **1125** 1600
State (Texas Education Agency)	244,103		400 **954** 1600
State (All Schools)	247,063		400 **956** 1600
U.S. and U.S. Territories	912,367		400 **964** 1600
Global Testers	915,267		400 **964** 1600

Reading and Writing

	# of Testers	Score Distribution	Mean Reading and Writing Score (200-800)
School	838		200 **571** 800
District	838		200 **571** 800
State (Texas Education Agency)	244,103		200 **486** 800
State (All Schools)	247,063		200 **487** 800
U.S. and U.S. Territories	912,367		200 **493** 800
Global Testers	915,267		200 **494** 800

Math

	# of Testers	Score Distribution	Mean Math Score (200-800)
School	838		200 **553** 800
District	838		200 **553** 800
State (Texas Education Agency)	244,103		200 **468** 800
State (All Schools)	247,063		200 **469** 800
U.S. and U.S. Territories	912,367		200 **470** 800
Global Testers	915,267		200 **470** 800

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Survey Results and Data Dashboard

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
The purpose of this presentation is to provide the Board with a comprehensive overview of recent survey data, including year-over-year comparisons. The data reflects input from students, parents, and staff, offering valuable insight into stakeholder perceptions and experiences. These findings will inform strategic planning and support alignment of district initiatives with community needs and expectations. Additionally, the public-facing data dashboard demonstrates the district's ongoing commitment to transparency and accountability by making key qualitative and performance data easily accessible. Together, these tools will support continuous improvement efforts and strengthen the district's engagement and partnership with the broader school community.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Tasha Barker - Assistant Superintendent of Organizational Services

ATTACHMENTS
Survey Data Results and Information Presentation
Data Dashboard Presentation

MEETING DATE
May 21, 2025

Stakeholder Survey Results
May 21, 2025

Survey Response Counts

	2024	2025
Student	5,649	5,973
Parent	1,733	1,748
Staff	898	907
Total	8,280	8,628

Survey Background

Strategic Plan Pillar Averages:

- Stakeholder survey questions and responses were organized by each pillar of the Strategic Plan.

- The response numbers represent the average scores within each pillar of the Strategic Plan, on a 5-point scale, with 5 being the highest.

- Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.

We Are One Community

We will bring our community together so that a welcoming neighborhood feel ensures all families feel connected, valued, and engaged.

2024	2025
3.81	3.88

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

We Are One Community

	2024	2025
Student	3.75	3.80
Parent	3.92	3.99
Staff	3.86	4.01

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Each Belong

We will include all community members and help students discover their interests so that we all feel a sense of connectedness.

2024	2025
3.68	3.80

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Each Belong

	2024	2025
Student	3.67	3.77
Parent	3.63	3.81
Staff	3.88	4.05

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Grow and Innovate

We will support our instructional staff, use data-based decision making, and partner with stakeholders to build off success and continuously improve.

2024	2025
3.82	3.87

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Grow and Innovate

	2024	2025
Student	3.96	3.96
Parent	3.50	3.61
Staff	3.68	3.83

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Prioritize Wellness

We will make school a great place to be so that the social, emotional, and physical well-being of our Lake Travis ISD community is supported.

2024	2025
3.59	3.67

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Prioritize Wellness

	2024	2025
Student	3.55	3.61
Parent	3.55	3.72
Staff	3.90	4.05

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Best In Class Education

We will demonstrate a commitment to all students so that each child is prepared for life and successful in the path they choose.

2024	2025
3.68	3.76

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Best In Class Education

	2024	2025
Student	3.75	3.81
Parent	3.50	3.58
Staff	3.68	3.85

*Scores of **3.5 or higher** indicate strong or healthy alignment with stakeholder expectations.*

Q&A

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Discussion of Intruder Detection Audit Report Findings

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
The top priority of Lake Travis Independent School District and the State of Texas is keeping students and staff safe every day. The Texas Education Agency recently conducted an Intruder Detection Audit at one or more of our campuses. The audits test whether a campus is accessible to an unauthorized individual. This audit seeks to help districts identify how campuses can improve safety for students, such as ensuring exterior doors are locked and provides an opportunity to create a safer learning environment for our students and staff.

We are working closely with our School Safety & Security Committee to ensure that we are training all our staff and securing our doors for the protection of everyone on our campuses. The support from the state in conducting the Intruder Detection Audits is just one of the many actions we are taking to ensure our schools are safe. We know that this work does not end, and we appreciate the Board's support.

We acknowledge that parents and community members are interested in the details of the audit results; however, it is in the best interest of the students that we do not share this information to the broader public as it could lead to compromising important campus security information. Specific details of the Intruder Detection Audit will be discussed in the executive session and with the Safety and Security Committee. Lake Travis ISD is committed to providing a safe and secure learning environment for our students and staff.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Todd Sumrall – Interim Chief of Police, LTISD

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
April 2025 Monthly Financial Reports-Statement of Revenues and Expenditures, Balance Sheet, Tax Statement and 2018/2023/2024 Capital Projects Reports

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
To provide a financial update to the Board and community regarding the financial position of the school district.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez-Assistant Superintendent of Business Services
Brad Goerke-Director of Finance

ATTACHMENTS
1. Statement of Revenues and Expenditures-April 2025
2. Balance Sheet-April 2025
3. Tax Statement-April 2025
4. 2018 Capital Projects Report-April 2025
5. 2023 Capital Projects Report-April 2025
6. 2024 Capital Projects Report-April 2025

MEETING DATE
May 21, 2025

Lake Travis ISD
STATEMENT OF REVENUE AND EXPENDITURES
GENERAL FUND

4/30/2025

		Current Year				Prior Year	
Revenues		**Budget**	**Actual**	**Balance**	**Percent of Budget**	**Cumulative Actual**	**Percent of Actual**
5711	Current Year Tax Revenue	$ 138,800,000	$ 137,181,712	$ 1,618,288	98.83%	$ 142,380,737	104.60%
5700	Other Local Revenues	7,650,000	3,961,264	3,688,736	51.78%	3,161,840	61.40%
5800	State Program Revenue	14,676,764	8,505,361	6,171,403	57.95%	6,921,275	58.36%
5900	Federal Revenue	158,500	4,411	154,089	2.78%	113,239	91.05%
	Total Revenue	**$ 161,285,264**	**$ 149,652,748**	**$ 11,632,516**	**92.79%**	**$ 152,577,091**	**99.56%**
Expenditures							
11	Instruction	$ 67,561,000	$ 51,217,360	$ 16,343,640	75.81%	$ 50,970,050	75.23%
12	Instructional Resources	1,071,983	800,167	271,816	74.64%	771,155	74.49%
13	Staff Development	1,400,016	909,617	490,399	64.97%	771,653	71.23%
21	Instructional Administration	2,361,963	1,688,048	673,915	71.47%	1,574,048	61.95%
23	School Administration	5,828,584	4,179,021	1,649,563	71.70%	4,065,566	70.24%
31	Guidance & Counseling	5,484,061	3,340,884	2,143,177	60.92%	3,764,999	69.62%
32	Social Work Services	475,689	318,253	157,436	66.90%	207,960	67.29%
33	Health Services	1,087,609	817,644	269,965	75.18%	746,289	79.56%
34	Transportation	4,846,547	4,002,657	843,890	82.59%	4,118,569	73.38%
35	Food Service	122,601	81,736	40,865	66.67%	81,734	33.60%
36	Co-Curricular Account	2,745,259	1,970,732	774,527	71.79%	1,937,356	71.55%
41	General Administration	4,525,194	3,417,368	1,107,826	75.52%	2,957,653	62.51%
51	Plant & Maint. Operation	12,778,467	9,315,051	3,463,416	72.90%	9,008,391	71.51%
52	Security	1,696,927	1,136,165	560,762	66.95%	1,008,956	61.62%
53	Non-Inst. Data Processing	3,136,783	2,031,917	1,104,866	64.78%	2,040,468	63.87%
61	Community Services	528,009	386,990	141,019	73.29%	321,589	66.85%
71	Debt Service	150,000	-	150,000	0.00%	-	0.00%
81	Facilities/Construction	40,867	27,248	13,619	66.67%	-	0.00%
91	State Transfers	50,611,945	-	50,611,945	0.00%	-	0.00%
92	Incremental Cost WADA	-	-	-	0.00%	-	0.00%
93	SPED TRF-Regular Day	66,760	57,809	8,951	86.59%	44,380	100.00%
95	JJAEP Transfer Payments	15,000	2,322	12,678	15.48%	-	0.00%
99	Travis County Appraisal	1,050,000	769,958	280,042	73.33%	750,401	74.63%
	Total Expenditures	**$ 167,585,264**	**$ 86,470,945**	**$ 81,114,319**	**51.60%**	**$ 85,141,218**	**53.07%**
Other Resources and (Uses)							
7990	Other Resources	-	-	-		1,159,998	50.68%
8990	Other Uses	-	-	-		-	
8911	Transfers-Out	-	-	-		-	
	Total Resources & Uses	**$ -**	**$ -**	**$ -**		**$ 1,159,998**	**50.68%**

Fund Balance

1200	Excess (Deficiency) Of Revenues Over Expenditures	$ (6,300,000)	$ 63,181,803
3000	Beginning Fund Balance 9/1	$ 41,139,503	
3000	Ending Fund Balance 8/31	**$ 34,839,503**	
3590	Committed Fund Balance	**$ 666,607**	
3600	Unassigned Fund Balance	**$ 34,172,896**	

Lake Travis ISD
COMBINED INTERIM BALANCE SHEET - ALL FUND TYPES
AS OF: April 30, 2025

		General Fund	Special Revenue Funds	Debt Service Fund	Capital Projects Fund	Internal Svc., Trust & Agency Funds	Total Funds
Assets							
Current Assets:							
1101	Cash	$ 389,631	$ 3,376,813	$ 240,040	$ 5,216,347	$ 7,529,842	$ 16,752,674
1103	Temporary Investments	118,110,838	-	29,181,740	276,751,271	209,762	424,253,610
	Total Cash and Investments	**$ 118,500,469**	**$ 3,376,813**	**$ 29,421,780**	**$ 281,967,618**	**$ 7,739,604**	**$ 441,006,284**
Receivables:							
1210	Property Taxes-Current	$ 3,330,423	$ -	$ 1,477,732	$ -	$ -	$ 4,808,155
1220	Property Taxes-Delinquent	2,867,927	-	1,258,031	-	-	4,125,958
1230	Allowance-Uncollected Taxes	(1,072,058)	-	(392,241)	-	-	(1,464,299)
1240	Due From Federal Agencies	-	522,197	-	-	-	522,197
1250	Sundry Receivables	13,075	2,641	-	-	-	15,716
1260	Due From Funds	1,245,126	-	-	-	-	1,245,126
1280	Due From Other Funds Warehouse Items	-	-	-	-	(641,283)	(641,283)
1290	Other Receivables	659,302	-	-	-	-	659,302
1300	Inventories, At Cost	80,141	152,699	-	-	-	232,841
	Total Receivables	**$ 7,123,936**	**$ 677,538**	**$ 2,343,522**	**$ -**	**$ (641,283)**	**$ 9,503,713**
1400	Other Current Assets			-	-	444,059.44	444,059.44
	Total Assets	**$ 125,624,405**	**$ 4,054,351**	**$ 31,765,301**	**$ 281,967,618**	**$ 7,542,381**	**$ 450,954,056**
Resources							
5010	Estimated Revenue	$ 161,285,264	$ 9,960,770	$ 67,200,000	$ 444,494,997	$ 17,713,620	$ 700,654,651
5030	Less: Realized Revenue	149,652,748	8,746,970	64,018,573	8,798,800	10,274,822	241,491,913
5000	Revenues to be Received	11,632,516	1,213,800	3,181,427	435,696,198	7,438,799	459,162,738
	Total Assets & Resources	**$ 137,256,921**	**$ 5,268,151**	**$ 34,946,728**	**$ 717,663,815**	**$ 14,981,180**	**$ 910,116,794**
Liabilities							
Current Liabilities:							
2110	Accounts Payable	$ 55,233	$ 818	$ -	$ 1,318,639	$ 1,450,834	$ 2,825,524
2160	Accrued Wages Payable	15,415,929	825,431	-	72,907	238,873	16,553,141
2170	Due To Other Funds	67,743	(91,510)	-	(172,255)	799,865	603,843
2180	Due To Other Govt's	1,017	-	-	-	-	1,017
2190	Due To Student Groups	-	-	-	-	-	-
2150	Payroll Deduct & Withhold	-	-	-	-	273,129	273,129
	Total Current Payables	**$ 15,539,922**	**$ 734,739**	**$ -**	**$ 1,219,291**	**$ 2,762,701**	**$ 20,256,653**
2210	Accrued Expenses	-	-	-	427,302	746,786	1,174,088
2300	Deferred Revenue	-	405,368	-	-	-	405,368
2400	Payable From Restricted Assets	-	-	-	-	-	-
2600	Deferred Inflows	5,763,177	-	2,335,371	-	-	8,098,548
	Total Liabilities	**$ 21,303,099**	**$ 1,140,107**	**$ 2,335,371**	**$ 1,646,593**	**$ 3,509,487**	**$ 29,934,657**
Fund Equity							
6010	Appropriations	$ 167,585,264	$ 10,445,273	$ 65,730,000	$ 728,111,179	$ 17,712,791	$ 989,584,507
6050	Less: Expenditures	(86,470,945)	(7,742,724)	(45,330,825)	(27,887,081)	(9,553,662)	(176,985,237)
6030	Encumbrances	-	-	-	-	-	-
	Available Appropriations	**$ 81,114,319**	**$ 2,702,549**	**$ 20,399,175**	**$ 700,224,098**	**$ 8,159,129**	**$ 812,599,270**
4310	Reserve For Encumbrances	-	-	-	-	-	-
3600	Unassigned Fund Balance	34,172,896	1,425,495	12,212,182	15,793,124	3,312,563	66,916,260
3590	Committed Fund Balance - Accr. Leave	666,607	-	-	-	-	666,607
	Total Liability & Fund Equity	**$ 137,256,921**	**$ 5,268,151**	**$ 34,946,728**	**$ 717,663,815**	**$ 14,981,180**	**$ 910,116,795**

SUMMARY OF TAX COLLECTIONS
AS OF APRIL 2025

2024-25 Original Tax Levy		$ 204,465,008.78
Delinquent Taxes as of 8/31/2024		5,729,201.17
Total Receivables for 2024-25		$ 210,194,209.95
Current Year Adjustments		(1,606,681.58)
Prior Year Adjustments		(1,689,319.37)
Adjusted Receivables		$ 206,898,209.00
Total Net Collections To Date		(198,906,126.32)
Outstanding Receivables as of	4/30/2025	$ 7,992,082.68

SUMMARY OF BUDGETED COLLECTIONS	BUDGETED	NET COLLECTED	BUDGETED DIFFERENCE	% OF BUDGET COLLECTED
Maintenance - Current Tax	$ 138,800,000.00	$ 137,181,711.78	$ 1,618,288.22	98.83%
Maintenance - Prior Year Tax	200,000.00	(59,831.18)	259,831.18	0.00%
Maintenance - Penalties & Interest	850,000.00	653,335.04	196,664.96	76.86%
Sub-total	$ 139,850,000.00	$ 137,775,215.64	$ 2,074,784.36	98.52%
Debt Service - Current Tax	$ 61,500,000.00	$ 60,868,460.38	$ 631,539.62	98.97%
Debt Service - Prior Year Tax	0.00	(26,245.25)	26,245.25	0.00%
Debt Service - Penalties & Interest	300,000.00	288,695.55	11,304.45	96.23%
Sub-total	$ 61,800,000.00	$ 61,130,910.68	$ 669,089.32	98.92%
Total Collections	$ 201,650,000.00	$ 198,906,126.32	$ 2,743,873.68	98.64%

Tax Collection Comparison with 2024-25: Adjusted Tax Roll	2024-25	2023-24	2022-23
Percent of Current Year Taxes Collected	97.63%	97.90%	97.89%
Percent of Total Taxes Collected	97.59%	96.92%	97.60%
Percent of Total Taxes and P & I Collected	98.05%	97.36%	97.94%
Tax Collection Comparison with 2024-25: Original Tax Roll			
Percent of Current Year Taxes Collected	96.86%	97.13%	96.17%
Percent of Total Taxes Collected	96.82%	96.16%	95.89%
Percent of Total Taxes and P & I Collected	97.28%	96.60%	96.23%

Lake Travis ISD
2018 Bond Program Summary
April 30, 2025

	Resources	Original Budget	Amended Budget	Total Resources	Balance
1	Bond Proceeds	253,000,000.00	236,305,111.00	236,305,111.42	(0.42)
2	Interest Revenue	0.00	5,389,663.00	5,388,885.60	777.40
3	Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4	Bond Premiums	0.00	18,631,178.00	18,631,178.35	(0.35)
	Total Resources	**253,000,000.00**	**260,325,952.00**	**260,325,175.37**	**776.63**

	Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10	Elementary School #7	31,511,000.00	34,600,445.00	34,600,444.21	0.79
20	Elementary School (Bee Creek Rd)	3,979,000.00	7,594,145.00	7,594,144.33	0.67
30	Secondary School #2	13,802,000.00	7,225,995.00	7,225,994.01	0.99
40	Middle School #3	75,980,710.00	77,314,012.00	77,314,011.66	0.34
50	FCA Projects	36,610,132.00	60,382,651.00	60,274,054.92	108,596.08
60/70	Small Renovation Improvements	16,927,133.00	11,828,948.00	11,828,947.58	0.42
	Construction/Renovation	**178,809,975.00**	**198,946,196.00**	**198,837,596.71**	**108,599.29**
81	Instructional Materials & Equipment	5,707,000.00	4,169,372.00	4,169,371.01	0.99
82	Technology	29,901,700.00	25,608,118.00	25,608,117.83	0.17
83	Copy Machines	750,000.00	1,093,944.00	1,093,943.97	0.03
84	Maintenance	600,000.00	793,831.00	793,830.93	0.07
85	Food & Nutrition Services	3,950,789.00	1,948,974.00	1,948,973.36	0.64
86	Transportation	13,300,000.00	8,939,816.00	8,939,815.11	0.89
87	District Furniture & Equipment	6,000,000.00	6,959,895.00	6,959,894.41	0.59
88	Police	0.00	590,596.00	590,595.95	0.05
90	Land	1,270,000.00	576,465.00	576,464.50	0.50
91	Bond Closing	2,000,000.00	1,918,024.00	1,918,023.77	0.23
94	Contingency	7,510,536.00	4,400,116.00	4,400,116.00	0.00
95	Program Administration	3,200,000.00	3,918,027.00	3,918,026.83	0.17
97	LTMS Wastewater Expansion	0.00	462,578.00	424,044.48	38,533.52
	Other Programs	**74,190,025.00**	**61,379,756.00**	**61,341,218.15**	**38,537.85**
	Total 2018 Bond Program	**253,000,000.00**	**260,325,952.00**	**260,178,814.86**	**147,137.14**

Lake Travis ISD
2023 Bond Program
April 30, 2025

	Resources	Original Budget	Amended Budget	Total Resources	Balance
1	Bond Proceeds -Prop A	548,410,330.00	548,410,330.00	246,715,051.13	301,695,278.87
1	Bond Proceeds -Prop B	60,790,110.00	60,790,110.00	40,639,386.23	20,150,723.77
2	Interest Revenue - Prop A	0.00	28,134,365.00	25,889,999.66	2,244,365.34
2	Interest Revenue - Prop B	0.00	4,580,013.00	4,214,651.10	365,361.90
3	Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4	Bond Premiums	0.00	14,705,427.00	14,705,427.00	0.00
	Total Resources	**609,200,440.00**	**656,620,245.00**	**332,164,515.12**	**324,455,729.88**

	Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10	Elementary School #8	50,917,526.00	50,917,526.00	172,706.74	50,744,819.26
20	Elementary School #9	55,517,521.00	55,517,521.00	5,618,823.00	49,898,698.00
30	Secondary School #2	179,990,620.00	179,990,621.00	8,494,938.05	171,495,682.95
40	Campus/District Facilities Projects	177,393,335.00	173,718,436.00	15,182,367.91	158,536,068.09
50	FCA Projects	36,312,528.00	36,260,427.00	5,338,278.62	30,922,148.38
60	Technology Improvements	60,790,110.00	60,796,667.00	26,668,037.75	34,128,629.25
	Construction/Renovation	**560,921,640.00**	**557,201,198.00**	**61,475,152.07**	**495,726,045.93**
81	Curriculum and Instructional Materials	1,800,000.00	5,452,003.00	1,387,304.45	4,064,698.55
82	Copy Machines	585,300.00	585,300.00	193,412.28	391,887.72
83	Maintenance	273,500.00	298,500.00	249,746.90	48,753.10
84	Transortation	9,620,000.00	9,620,000.00	941,316.54	8,678,683.46
85	District Furniture & Equipment	1,500,000.00	1,655,366.00	233,405.87	1,421,960.13
86	FANS Equipment	0.00	3,879,972.00	261,812.08	3,618,159.92
90	Land	15,000,000.00	16,240,220.00	16,190,436.46	49,783.54
91	Bond Closing	4,000,000.00	4,000,000.00	2,059,864.36	1,940,135.64
94	Contingency	12,000,000.00	53,722,686.00	0.00	53,722,686.00
95	Program Management	3,500,000.00	3,500,000.00	441,500.78	3,058,499.22
98	Miscellaneous Contracted Services	0.00	465,000.00	415,995.91	49,004.09
	Other Programs	**48,278,800.00**	**99,419,047.00**	**22,374,795.63**	**77,044,251.37**
	Total 2023 Bond Program	**609,200,440.00**	**656,620,245.00**	**83,849,947.70**	**572,770,297.30**

Lake Travis ISD
2024 Bond Program - Athletics
April 30, 2025

	Resources	Original Budget	Amended Budget	Total Resources	Balance
1	Bond Proceeds -Athletics	143,093,994.00	143,093,994.00	33,440,000.00	109,653,994.00
2	Interest Revenue	0.00	3,000,000.00	1,899,348.96	1,100,651.04
3	Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4	Bond Premiums	0.00	1,855,303.00	1,855,303.30	(0.30)
	Total Resources	**143,093,994.00**	**147,949,297.00**	**37,194,652.26**	**110,754,644.74**

	Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10	Lake Travis High School	35,638,190.00	35,638,190.00	4,889,394.30	30,748,795.70
20	High School No. 2	102,748,000.00	102,748,000.00	0.00	102,748,000.00
30	Lake Travis Middle School	1,200,000.00	1,200,000.00	0.00	1,200,000.00
40	Hudson Bend Middle School	2,307,804.00	2,307,804.00	130,080.00	2,177,724.00
50	Bee Cave Middle School	1,200,000.00	1,200,000.00	0.00	1,200,000.00
91	Bond Closing	0.00	500,000.00	295,303.30	204,696.70
94	Contingency	0.00	4,355,303.00	0.00	4,355,303.00
	Construction/Renovation	**143,093,994.00**	**147,949,297.00**	**5,314,777.60**	**142,634,519.40**
	Total 2024 Bond Program	**143,093,994.00**	**147,949,297.00**	**5,314,777.60**	**142,634,519.40**

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Amendment to the Custodial Services Agreement with Southeast Services Corporation

RECOMMENDED ACTION
Approve the fifth amendment to the previously amended and restated service agreement between Southeast Service Corporation and Lake Travis Independent School District and delegate authority to the Superintendent or designee to execute the amendment.

RATIONALE
The District's current contract with SSC Services Solutions was awarded on May 19, 2021 for the term of July 1, 2021 to June 30, 2022. The agreement was first amended due to the COVID-19 pandemic and has been renewed three additional terms of July 1, 2022 to June 30, 2025. The current annual contract price for 2024-2025 term is $3,968,732.10.

As part of the annual contract renewal and in accordance with paragraph 3.1 of the Agreement, an increase of $59,530.98 to the annual contract price reflects an agreed-upon 1.5% annual inflation adjustment. The proposed annual contract price for the fifth-year term of July 1, 2025 to June 20, 2026 is $4,028,263.08.

BUDGET PROVISIONS
General Operating Budget

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Roy Hudson – Senior Director of Maintenance & Safety
Chad Crowson – General Counsel

ATTACHMENTS
Fifth Amendment to the Custodial Services Agreement
SSC Service Agreement – July 1, 2021

MEETING DATE
May 21, 2025

FIFTH AMENDMENT TO THE AMENDED AND RESTATED SERVICE AGREEMENT BETWEEN SOUTHEAST SERVICE CORPORATION AND LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

This Fifth Amendment, effective as of July 1, 2025, is made by and between SOUTHEAST SERVICE CORPORATION d/b/a SSC SERVICE SOLUTIONS ("Contractor), a Tennessee corporation, whose principal office is located at 1225 E. Welsgarber Road, Suite 200, Knoxville, TN 37909, and LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT, a political subdivision of the State of Texas ("Client"), whose principal office is located at 3322 Ranch Road 620 S., Austin, TX 78738, and is effective as of the last date signed by the parties below ("Effective Date").

WHEREAS, the parties previously executed a Service Agreement, effective as of July 1, 2021, but voided such signed agreement and replaced it with an Amended and Restated Services Agreement (the "Agreement") as of July 14, 2021. On January 18, 2022, the parties executed a First Amendment to the Agreement. On July 1, 2022 the Parties executed a Second Amendment. On July 1, 2023 the Parties executed a Third Amendment and on July 1, 2024 the Parties executed a Fourth Amendment.

WHEREAS, the parties now wish to execute this Fifth Amendment to the Amended and Restated Services Agreement as described below. All other terms of the Amended and Restated Service Agreement remain unchanged.

1. **Section 5, Term**. The Parties hereby agree to renew this Agreement for an additional one-year period through June 30, 2026.

2. **Section 2.4, Annual Contract Price**. Effective as of July 1, 20254, Contractor will provide the Services in accordance with these contract terms and the scope of work identified in Schedule 1 for $4,028,263.08 per year ("Annual Contract Price").

   This rate increase reflects an agreed-upon 1.5% annual inflation adjustment in accordance with paragraph 3.1 of the Agreement, resulting in an increase to the annual price of $59,530.98.

For Contractor:

Southeast Service Corporation d/b/a SSC Service Solutions

Signature: _____

Seth A. Ferriell
Chief Executive Officer, SSC

Date: _____

For Client:

Lake Travis Independent School District

Signature: _____

Pam Sanchez
Chief Financial Officer, LTISD

Date: _____

Amended and Restated
SERVICE AGREEMENT

This Service Agreement ("Agreement") is made as of July 1, 2021 ("Effective Date"), by and between SOUTHEAST SERVICE CORPORATION d/b/a SSC SERVICE SOLUTIONS ("Contractor"), a Tennessee corporation, whose principal office is located at 1225 E. Weisgarber Road, Suite 200, Knoxville, TN 37909, and Lake Travis Independent School District, a political subdivision of the State of Texas ("Client"), whoseprincipal office is located at 3322 Ranch Road 620 S., Austin, TX 78738.

WHEREAS the parties previously executed a services agreement, effective as of July 1, 2021, but now wish to void such signed agreement and replace it with this signed Agreement;

WHEREAS upon execution of this Agreement, the prior service agreement will become null and void;

1. **Scope of Services; Appointment**

1.1. Client hereby appoints Contractor and Contractor hereby agrees to perform the work described in Schedule 1, including supplying of any supplies and products incidental to the Services as set forth in Schedule 1 (the "Services") at the location(s) set forth on Schedule 2 (each, a "Facility"), upon the terms and conditions set forth herein. The Parties hereby agree that the intent of Schedule 1 was to capture all of the cleaning specifications outlined in Client's 2021 RFP #21-012, but to the extent that Schedule 1 has not captured such specifications, Contractor shall adhere to all cleaning specifications as outlined in Client's 2021 RFP #21-012.

1.2. During the performance of the Services Contractor hereby agrees to conform to and comply with Client's rules, regulations, procedural practices communicated by Client to Contractor in writing with written notification of any changes thereto.

1.3. Client may request, from time to time, that Contractor perform additional services hereunder pursuant to one or more written work orders (each, a "Work Order"). Each such Work Order shall be forwarded by Client to Contractor, and shall be deemed to be accepted by Contractor at such time as Contractor performs any of the services set forth in the Work Order. All Work Orders shall be governed by the terms of this Agreement [and the pricing set forth in Schedule 3 (unless otherwise agreed between the parties)], and shall be deemed to be incorporated into and made a part of this Agreement by this reference.

1.4. Client responsibilities include:

1.4.1 Designate a point of contact to serve as the day-to-day contact person for the District. This individual will serve as a day-to-day administrator/manager but is not authorized to amend the Agreement nor modify it through any subsequent agreement;

1.4.2 Provide a small office space, desktop computer, phone, furniture, limited storage space, and utilities for the on-site operations. The determination of adequate and suitable is at Client's sole discretion;

1.4.3 Responsibility for all matters relating to asbestos;

1.4.4 Responsibility for providing and replacing light bulbs and toilet seats;

1.5 Contractor responsibilities include:

1.5.1 Ensure that all services furnished strictly conform with this Agreement;

1.5.2 In no event shall service substitutions or changes be permitted without the express written authorization of Client. To be effective, such authorizations must be in writing and prepared in the form of an amendment to the Agreement signed by both parties;

1.5.3 Provide vehicles to transport equipment, supplies, etc.

1.5.4 Conduct a monthly survey with Client's staff and maintain a "superior rating" on surveys throughout the term of the contract and extensions, if any. Surveys should be done through an online / email system (e.g., Survey Monkey). Results shall be made available to the Client's designated point of contact upon request.

1.5.5 Designate an on-site manager. This person shall be available as deemed necessary by Client.

1.5.5.1 This individual must be dedicated solely to Client and shall be the main contact person for routine daily matters.

1.5.5.2 The on-site manager is to manage the provisions and supervision of the services and to provide liaison

with Client's point of contact.

1.5.5.3 This on-site individual will be the manager or supervisor of an on-site management team responsible for management and supervision of Contractor's personnel to ensure housekeeping services are conducted in accordance with the requirements in this Agreement.

1.5.5.4 Contractor will ensure adequate regional and/or general office corporate management personnel are involved to support the on-site management team.

1.5.5.5 Contractor will ensure routine, quality control inspection and management support at a frequency of approximately once per month; periodic formal review meetings with Client's administration to assess Contractor's performance; and attendance at meetings with Client to address specific problems and/or issues.

1.5.5.6 An On-Site Manager, dedicated solely to Lake Travis ISD, is required to ensure proper supervision and shall be responsible for directing contracted employees, recording and reporting hours worked by employees, on-site training and responding to any and all complaints, concerns, and/or emergencies/contingencies. The Contractor shall designate a lead person for each campus during the evening shift to communicate with the On-Site Manager and/or administrator for daily instructions.

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1.6 The majority of cleaning shall be done after school hours in order to pose a minimum disruption to normal school functions. Spot cleaning shall be done during school hours as necessary.

2 Invoices; Payment.

2.4 Annual Price. Contractor will provide the Services in accordance with these contract terms and the scope of work identified in Schedule 1 for $3,248,503.20 per year ("Annual Contract Price"). The Annual Contract Price shall be subject to adjustment in accordance with this Agreement.

2.4.1 Title to Equipment. Contractor shall remain the owner of any equipment it purchases for use at Client's location.

2.5 Annual Scholarship Fund Donations. Each year of the Agreement, Contractor will donate to Client $25,000.00 for Client to utilize towards a scholarship fund of its choosing (each donation a "Scholarship Donation"). Each Scholarship Donation will be amortized by Contractor as an investment and will be amortized from the date of disbursement through June 30, 2026. If the Agreement terminates for any reason prior to the complete amortization of any of the Scholarship Donation, Lake Travis will pay to SSC the remaining unamortized balance of the Scholarship Donation immediately upon termination.

2.6 Invoicing. The Annual Contract Price will be invoiced in equal monthly installments of 1/12th of the total Annual Contract Price. The first installment payment shall be due on the last day of the month following the Effective Date with all subsequent installment payments due on or before the last day of the month for each month of Service thereafter.

2.7 Records/Audit. Contractor shall maintain complete and accurate records of all amounts billed to Client and Payments made by Client in accordance with generally acceptable accounting practices. Contractor shall retain such records for a period of five (5) years, unless a longer time is required by law, from the date after Client has made final payment and all other pending matters related to this Agreement are closed. Client agrees to provide Contractor with reasonable supporting documentation concerning any disputed amount upon Contractor's request. Execution of this Agreement constitutes Contractor's acceptance of the authority of Client's internal and external auditors, the Texas Education Agency, the Comptroller General of the United States, or any of their duly authorized representatives (collectively, "Auditor") to conduct audits or investigations in connection with the Agreement. Contractor agrees to cooperate with the Auditor conducting such audits or investigations and to provide the Auditor access to any books, documents, papers, and records of Contractor which are directly pertinent to the Agreement, for the purpose of making audit, examination, excerpts, and transcriptions.

2.8 Non Payment: Contractor agrees that a temporary delay by Client in making payments under this Agreement due to the Client's accounting disbursement procedures shall not place the Client in default of this Agreement and shall not render the Client liable for interest or penalties, provided such delay does not exceed thirty (30) days after receipt of the invoice. Any payment not made by Client to Contractor within thirty (30) days after receipt of the invoice shall bear interest in accordance with Chapter 2251, Subtitle F, of the Texas Government Code, as amended. Client shall notify Contractor no later than the 21st day after receipt of the invoice should Client believe the invoice contains an error or the amount is disputed. Client and Contractor hereby mutually agree to work in good faith to resolve contested or disputed invoices if at all possible within sixty (60) days of receipt of the notice of dispute and that payment of the disputed amount only is not due while a bona fide dispute is pending. Contractor may, at Contractor's option, terminate this Agreement at any time after giving thirty (30) days' prior written notice to Client of an undisputed overdue invoice unless all overdue amounts are paid before the end of the notice period.

2.9 Payment Terms During Notice Period. Upon the issuance of a Notice of Termination, Client will pay all undisputed amounts due to Contractor on or before the date of termination.

2.10 Notwithstanding the fact that Client may be a tax-exempt entity, Client will be responsible for payment of any sales, use, excise, value-added, personal property, export, import, withholding, transaction privilege, or similarly imposed taxes

(collectively, "Taxes") assessed or imposed by any tax authority with respect to the payments Client makes to Contractor under this Agreement (except for any taxes based on Contractor's net income or employees). The pricing set forth in this Agreement, as amended from time-to-time by the parties, does not include any Taxes. Client agrees that, if at any time during or after the Term, any tax authority asserting jurisdiction over Client or any Facility assesses liability for Taxes, imposes one (1) or more Taxes or revokes (through legislation or agency decision) any tax exemption previously relied upon by Client, Client shall assume full responsibility for and make all payments of *any* and all Taxes due.

2.11 Quality Incentive Program. The Annual Contract Price will be subject to certain deductions or increases pursuant to the following Quality Incentive Program: 70

- In the event Contractor receives an annual average score below the minimum level of 80% (i.e.- Fair), Client will deduct an amount in accordance with the "Payment Adjustment Schedule" below from the Contractor's invoice up to a maximum of 1% of the Annual Contract Price annually.

Payment Adjustment Schedule:

Score	Annual Deduction
70% - 79.9%	0.25% of the Annual Contract Price
60%-69.9%	0.75% of the Annual Contract Price
0% - 59.9%	1.0% of the Annual Contract Price

- In the event Contractor meets and/or exceeds the annual average score of 90% (i.e., Excellent) rating, Client will pay Contractor an incentive amount in accordance with the "Incentive Award Schedule" below, up to a maximum of 1% of the Annual Contract Price, annually. Any amounts paid to Contractor through this quality incentive program will be disbursed directly to non-administrative employees, including hourly associates working at Client's location as well as campus leads and campus managers.

Incentive Award Schedule:

Score	Annual Payment Incentive
90%-92.9%	0.25% of the Annual Contract Price
93%-95%	0.75% of the Annual Contract Price
95%-100%	1.0% of the Annual Contract Price

3 **Service Fee Adjustments.**

3.1 Annual Inflation Adjustment: At the end of each year of this Agreement. the Annual Contract Price and any other feesin the Agreement ("Service Fees") may be increased by an amount equal to the Consumer Price Index -W. Less Food and Energy, for the most recently published twelve (12) month period, as published by the U.S. Department of Labor. Bureau of Labor Statistics. The actual adjustment price may be negotiated between Client and Contractor, with the CPI-W being the maximum adjustment allowed. The publication used will be the one that is at least ninety (90) days prior to the expiration of the then current annual term in order to allow sixty (60) days for price changes and/or extensions of the Agreement. The annual inflation adjustment applies to increases and decreases.

3.2 Change in Services: Should the Client request a change in Services for reason of a change in Service tasks or frequencies to be performed, a significant change in Facility occupancy or a significant change in the square footage or use of the Facility, or any other similar change in Services, and should such change in Services result in an increase or decrease in costs to Contractor, Client and Contractor will negotiate an update to the Annual Contract Price to reflect the actual changes in costs to Contractor and will execute a written amendment to this Agreement to reflect such changes.

3.3 Labor Changes The Service Fees will be subject to change in the event of (i) a change to existing or new federal, state or local payroll taxes (including changes to any payroll based taxes or withholdings such as FICA, SUI and FUI): (ii) a change related to unionization of Contractor employees at a Facility (whether an initial collective bargaining agreement, amendments to an existing collective bargaining agreement, or the negotiation of a subsequent, successor collective bargaining agreement); (iii) an increase in the minimum wage rate or the enactment of any "living wage" laws by any governmental entity; and/or (iv) new or additional fees. taxes, assessments or other charges or costs incurred Y Contractor

arising out of changes to existing or new federal, state or local legislation or legal requirements. Client and Contractor will negotiate an increase in the Service Fees to account for the change in such costs and will execute a written amendment to this Agreement to reflect such changes.

4 **Termination of Agreement.** In the event of a default by either party, both parties shall have the right to terminate the Contract Award in whole or in part for cause, by written Notice of Termination effective in sixty (60) days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such thirty (30) day period, cures such default, or provides evidence sufficient to prove to the other party reasonable satisfaction that such default does not, in fact, exist. Either party shall have the right to terminate the Contract, in whole or in part, for its own convenience and without cause any time upon one hundred twenty (120) days prior written Notice of Termination. Upon receipt of a Notice of Termination, the Contractor shall promptly cease all further work pursuant to the Contract Award, with such exceptions, if any, specified in the Notice of Termination. If funds for the services provided under this contract are not appropriated in a given Client fiscal year, the Client may terminate the contract upon sixty (60) days written notice.

5 **Term.** This Agreement shall become effective on July 1, 2021 and shall remain in effect for an initial period through June 30, 2024. Thereafter, Client and Contractor agree to the option to extend this Agreement for three (3) additional one-year periods upon mutual acceptance by both parties. All extensions will be done as an amendment to this Agreement, in writing, at least sixty (60) days prior to the expiration of the then current term.

6 **Confidentiality.** Contractor acknowledges that Client is a governmental entity subject to the Texas Public Information Act (TPIA) and that information or documents in connection with this procurement or Agreement may be subject to release as public information. To the extent Contractor believes that any of its proposals or other documents related to this Agreement constitute confidential, proprietary, and/or trade secret Information or may otherwise be exempt from disclosure, Contractor must clearly and conspicuously mark each page its believes is exempt from the TPIA and identify the specific exemptions. Contractor also acknowledges that marking such information "Confidential" or otherwise exempt does not guarantee that the information will be withheld from public disclosure. If Client receives a request for public information involving information related to this Agreement, and Contractor has clearly and conspicuously marked the information as Confidential or otherwise exempt, Client will respond pursuant to Chapter 552 of the Texas Government Code, which may or may not require that Client provide notice of the request to Contractor. Contractor understands and agrees that it is solely responsible for submitting to the Attorney General of Texas each reason why the requested information should be withheld and a latter, memorandum, or brief in support of that reason. For all information not subject to the Texas Public Information act and clearly and conspicuously identified as confidential, as required above, the parties agree to keep strictly confidential at all times during the term of this Agreement and thereafter, all non-public business information which may be provided by one party to the other party or its employees, directors, officers, or agents ("Representatives") in the course of the performance of this Agreement. The parties shall advise all of their Representatives of the obligations contained herein and shall ensure such Representatives' compliance with such obligations. This restriction may include, but is not limited to, business plans, prices, product/service specifications, prototypes, computer programs, sales data, models, marketing plans, financial data, personnel statistics and the like, as well as confidential specifications, drawings, sketches, data or technical business information ("Confidential Information"). Notwithstanding the above or any language to the contrary contained in this Agreement, the term "Confidential Information" shall

specifically exclude information which (i) was known to the receiving party before receipt, directly or indirectly, from the disclosing party; (ii) is lawfully obtained, directly or indirectly, by the receiving party, from anyone, under no obligation of confidentiality; (iii) is or becomes publicly available other than as a result of an act or failure to act by the receiving party; (iv) is approved for release in writing by the disclosing party or (iv) is required by law, court order, the Texas Public Information Act, or judicial process to be disclosed. All Confidential Information shall be used by the parties solely in connection with this Agreement, and all Confidential Information of a party in the possession of the other party shall be returned upon the termination of this Agreement. Nothing in this Agreement is intended in any way to prohibit the disclosing party from seeking injunctive relief or other equitable or legal remedy to protect against the release of its Confidential Information.

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7 **Non-Solicitation**. The parties agree that at no time during the term of this Agreement or for a period of two (2) years immediately following the expiration of this Agreement for any reason, will they, or their respective agents or representatives, attempt to recruit, employ, or use the services of, directly or indirectly, including employment by any successor contractor Client may contract with to perform the Services, any salaried (exempt) employee of the other party or anyone who has, as a past salaried (exempt) employee of the other party, provided services under this Agreement, unless prior written approval by Contractor is provided. If a party, its agent or representative should hire a salaried (exempt) employee (or past salaried (exempt) employee as defined above) of the other party without prior written approval, it agrees to reimburse the other party an amount equal to two (2) years of such employee's then current salary (or, in the case of past employees, such employee's salary immediately prior to termination).

8 **Independent Contractor**. The parties agree that the relationship between Contractor and Client arising from this Agreement is that of independent contractor. Except for the rights retained by or granted to, and the obligations undertaken by each party pursuant to this Agreement, neither has any right or any authority to enter into any contract or undertaking in the name of or for the account of the other, nor shall the acts or omissions of either create any liability for the other. The parties shall conduct their business at their own initiative, responsibility and expense. All persons furnished by Contractor to perform the obligations required or permitted under this Agreement shall be considered solely Contractor employees. Client shall have the right to require the replacement of any Contractor employee employed on Client's premises whose continued presence, in the opinion of the individual designated by Client as having oversight over this Agreement, is not in the best interest of Client, its students or staff, provided that such request for replacement does not contravene statutes, regulations, ordinances and other legal requirements, to the extent applicable to the Services ("Applicable Laws"), is reasonably justified in writing, and Contractor is first given an opportunity to respond and address such issues consistent with this Agreement. Contractor's obligation to comply with any such request shall also be subject to restrictions imposed upon Contractor by any collective bargaining agreement or other contract affecting such employee. Nothing herein shall be construed as creating the relationship of principal and agent or partners or co-ventures.

9 **Contractor's Personnel**. Supervision of all Contractor's staff, as required for the execution of the services in this Agreement, shall be done by the Contractor.

9.1 Contractor will hire, schedule, and supervise all necessary, appropriate, and qualified personnel to provide the custodial services specified in this Agreement. "Qualified" includes the requirement to be authorized to work in the United States. Client shall consider the intentional employment of unauthorized aliens by Contractor in violation of U.S. Immigration laws cause for unilateral cancelation of the contract.

9.2 Contractor's hiring practices should include, at a minimum, background checks. Client's Human Resource Services staff may "inspect" or "monitor" the employment practices and records of Contractor to ensure compliance. Contractor agrees to allow this "inspection" and/or "monitoring" and will correct deficiencies/shortfalls in a timely manner. Staffing must be adequate for each site in order to achieve a high level of cleanliness and appearance in the most efficient manner.

9.3 Contractor shall have the flexibility to change hours to ensure sufficient day and evening coverage, to see that each facility is opened at the specified time and properly secured after the second shift is complete and that the cleaning personnel are scheduled for special events that occur after normal school hours.

9.4 Contractor shall be responsible for all wages, payroll, or other employment related taxes, insurance, and fringe benefits.

9.5 Contractor shall provide, or arrange to provide, its employees the opportunity for healthcare benefits for the employee and his/her family members.

9.6 All matters pertaining to the recruitment, screening, hiring, and retention shall be the responsibility of the Contractor and shall be done fully in compliance with existing statutes and regulations pertaining to affirmative action, non-discrimination, wage and hour and any other stipulations germane to prudent personnel management.

9.7 Only those personnel who have been properly trained shall be assigned duties under this Agreement. Contractor will maintain records and documentation of training.

9.8 Contractor personnel shall be neat and clean in appearance. Uniforms and/or picture identification badges shall be worn, which fully identify the worker as a member of Contractor's work force.

9.9 Contractor personnel must wear a nametag or badge issued by Client's Human Resource Services department.

- 9.9.1 One nametag / badge per employee will be issued at Client's expense up to a maximum number of 30% above Contractor's on-site full-time equivalents (FTEs) personnel strength during a contract year.
- 9.9.2 If personnel turnover exceeds 30% during a contract year, Contractor will pay Client $10 per employee nametag / badge issued by Client's Human Resource Services department.
- 9.9.3 Replacement of nametag / badge due to loss or illegibility will be at Contractor's expense at a rate of $10 each.
- 9.9.4 Nametags / badges will be collected by Contractor and returned to Client's Human Resource Services department

upon termination of employee's employment.

9.10 Contractor's personnel may not work on Client's property where students are present when they have been convicted, received probation or deferred adjudication for any of the following offenses: (1) any offense against a person who was, at the time the offense occurred, under 18 years of age or enrolled at a public school; (2) any sex offense; (3) any crimes against persons involving controlled substances or property; or (4) any other offense Client believes might compromise the safety of students, staff, or property.

9.11 Contractor's employees will be bonded in the amount of $50,000 (3rd Party Fidelity Bond). Client will accept an Employee Dishonesty Insurance Policy; however, the proof of coverage is required and Client must be named as an additional insured.

9.12 Client observes most National holidays and Spring Break. Reduced staffing is acceptable during these periods; however, Contractor must maintain sufficient staff to provide minimal custodial services and respond quickly to emergencies and/or contingencies.

9.13 Client expects all auxiliary and administrative staff, including custodians, to report to work at their normally scheduled time during inclement weather and does not pay an inclement weather absence. Reduced staffing is acceptable during these periods; however, Contractor must maintain sufficient staff to provide minimal custodial services and respond quickly to emergencies and/or contingencies.

10 **Safety and Security**. Contractor shall be responsible for the training, as necessary, in the application of chemicals and the use of equipment to facilitate safe conditions outlined by OSHA for the employees and Client's students and staff. Contractor shall ensure proper accountability of equipment, key control, access control, and physical security. Each facility administrator will direct the staff as to doors being unlocked for meetings and events; otherwise the buildings are to remain secure. Contractor will ensure all perimeter doors are secured every evening.

11 **Equipment and Supplies/Materials**. Client will provide limited, lockable storage spaces and Contractor will take reasonable care to safeguard the supplies and equipment from theft, vandalism, and loss. Contractor shall be responsible for losses incurred due to theft and/or vandalism facilitated by Contractor not property securing the supplies and equipment. All equipment shall be maintained properly and kept in clean and working condition by Contractor. All chemicals and equipment must meet or exceed OSHA requirements and commonly recognized safety requirements. Safety Data Sheets (SDS) will be maintained in an accurate and up-to-date manner at each campus/facility for all chemicals used in the cleaning process, and shall be readily available to all personnel.

12 **Emergencies**. All emergency conditions shall be promptly reported to Client's point of contact. Contractor will respond to emergencies requiring custodial services including after hours, weekends, and holidays. Maintenance and Operations will call for Contractor to obtain sufficient resources to address the emergency. Contractor must respond immediately to emergency situations, but in any case no longer than one hour.

13 **Indemnification**. Contractor shall indemnify, defend and hold harmless Client and its directors, officers, agents and employees, with respect to any and all liabilities, losses, claims, suits, damages, taxes, charges and demands to the extent of Contractor's negligent acts or omissions. Contractor shall not have an obligation to indemnify, defend and hold harmless Client for any liabilities, losses, claims, suits, damages, taxes, charges or demands to the extent of any negligent acts or omissions of Client. Nothing herein shall be deemed or considered to be a waiver of Client's rights, privileges, and immunities under the constitution or federal, state, or common laws.

14 **Limitation of Liability**. To the extent allowed by law, Contractor's total liability for damages, or otherwise, resulting from its performance or nonperformance under this Agreement or with regard to any obligations/responsibilities herein shall not exceed the total amount paid by Client to Contractor during the twelve months immediately preceding the events giving rise to such claims. Neither party will be liable to the other party or its representatives for special, indirect or consequential damages, including lost profits, whether or not foreseeable, or punitive damages.

15 **Federal, State and Local Rules and Regulations.** Contractor and Client agree to comply with all Applicable Laws. Contractor's employees may have access to confidential student information and/or education records. Contractor agrees and warrants that it's employees or agents will strictly comply with the Family Education Rights and Privacy Act (FERPA) in accordance with federal law and that it will not release or disclose any personally identifiable information regarding Lake Travis ISD students (Student Data) without the prior written consent of the parent, guardian, or eligible student as required by 34 C.F.R. §§ 99.30 - 99.32.

16 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Agreement may not be assigned by either party without the prior written consent of the other party. Consent will not be unreasonably withheld. No part of this Agreement may be subcontracted to any other service provider without the express written consent of Client.

17 **Insurance**. Contractor must maintain insurance at all times during the term of this Agreement, at its own cost and expense, in accordance with the requirements and limits set forth in Exhibit A to this Agreement. Client shall maintain

insurance, at its own cost and expense, the types and limits being determined by Client within its own discretion.

18 Notices. All notices and communications concerning this Agreement shall be addressed to:

If to Client:
Lake Travis Independent School District
Attn: Superintendent
3322 Ranch Road 620 S.
Austin, TX 78738

If to Contractor:
Southeast Service Corporation
Attn: CEO
1225 E. Weisgarber Road, Suite 200
Knoxville, TN 37909

With a copy to:
Compass Group USA, Inc.
Attention: General Counsel
2400 Yorkmont Road
Charlotte, North Carolina 28217

or at such address as may be designated in writing to the other party.

Notices shall be sent by registered or certified U.S. Mail, or by commercial overnight delivery service and shall be deemed delivered to the recipient's address on the date of return receipt acknowledgment, in the case of notices sent via U.S. Mail; or on the next day after the date the notice was sent, in the case of notices sent by overnight delivery service.

19 Force Majeure. Neither party hereunder shall be liable to the other for failure to perform when such failure is caused by unforeseeable force majeure circumstances, including any pandemic, strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, or acts of God. The parties agree that under such conditions, Contractor will work with the Client in good faith to provide services and develop appropriate responses and courses of action, as is practical and reasonable under the circumstances. If Client requests that Contractor provide the Services during a force majeure event, then any financial or performance guarantees or incentive penalties to Contractor will not apply under these conditions and instead the Client will be responsible for, and hold Contractor harmless from, all costs and expenses associated with the services, responses, courses of action, and operations, whether directly or by reimbursement to Contractor.

20 Provision of Office and Storage Space. Client shall provide Contractor with adequate and appropriate office and storage space, office furniture and equipment for such space in the primary area of each Facility.

21 General Provisions.

17.1 Entire Agreement; Conflict in Terms. The terms of this Agreement and the Schedules and Exhibits attached hereto constitute the entire and exclusive agreement between the parties pertaining to the subject matter hereof and supersede all prior practice, agreements, understandings, negotiations and discussions with respect to the subject matter hereof whether oral or written.

17.2 Modifications. No supplement, modification or waiver of this Agreement shall be binding unless executed in writingby each of Contractor and Client's authorized representatives.

17.3 Severability. The invalidity or unenforceability of any provision of this Agreement or any covenant herein contained shall not affect the validity or enforceability of any other provision or covenant hereof or herein contained and any such invalid provision covenant shall be deemed to be severable.

17.4 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Texas without regard to its choice of law provisions. The parties agree that any legal suit, action or proceeding in equity, arising out of or relating to this Agreement shall be governed by the substantive law of the State of Texas without reference to its principles of conflicts of laws. Any litigation regarding this contract will be filed in the state and federal courts located in Travis County, Texas.

17.5 Execution. This Agreement and any amendments thereto may be executed in one or more counterparts. Each counterpart shall be deemed an original, but all counterparts together constitute one and the same instrument.

17.6 Contractor Vendors. In connection with Services provided hereunder, Contractor shall purchase any inventory, equipment, and services it is responsible for providing hereunder from various sellers and vendors selected by Contractor atits sole discretion. Client accepts that Contractor may receive volume, trade or cash discounts or volume allowances for items or services purchased as part of providing Services under this Agreement and that those discounts/ volume allowances will accrue to Contractor and will not be credited back to Client.

17.7 Survival. Upon cancellation, expiration or termination, all rights and obligations under this Agreement will end (except for amounts due under the terms of this Agreement and the provisions of Sections 6, 7, 9 and 10).

17.8 Limitation of Claims. Claims of either party will be presented in writing to the other party within two (2) years of the termination of the Agreement or they will be forever barred.

17.9 Contractor Code of Conduct. Contractor strives to demonstrate high ethical standards in its business practices. The Contractor Code of Conduct, available for review at http://compass-usa.com/Pages/Code-of-Ethics.aspx, contains the minimum standards by which the parties are expected to conduct themselves when performing their respective obligations under this Agreement.

17.10 Unlawful Discrimination. Neither party will discriminate in any unlawful manner. Any changes necessary to the physical facilities to comply with the Americans with Disabilities Act will be the Client's responsibility. **The parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.S(a) and 60-741.S(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sexual orientation, gender identity, sex, or national origin. Moreover, these regulations require that the parties take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sexual orientation, gender identity, sex, national origin, protected veteran status or disability.**

17.11 No Boycott of Israel. By signing this Agreement, Contractor verifies that Contractor (and any affiliate, subsidiary, or parent company) does not, and will not, boycott Israel during the term of any contractual arrangement with the Client. For purpose of this Contract, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Contractor voluntarily and knowingly acknowledges and agrees that the Agreement shall be null and void should facts arise leading the Client to believe that the Contractor was or has become a company that boycotts Israel.

17.12 Prohibition of Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organizations. In accordance with Texas Government Code, Chapter 2252, Subchapter F, Client is prohibited from entering into a contract with a company that is identified on a list maintained by the Texas Comptroller. Contractor certifies that it is not a company identified on a list prepared and maintained under Texas Government Code §§806.051, 801.051, or 2252.153, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. Contractor voluntarily and knowingly acknowledges and agrees that the Agreement shall be null and void should facts arise leading the Client to believe that the Contractor was a listed company at the time of procurement.

17.13 Prohibition of Contracts with Affiliates of Abortion Providers. In accordance with Texas Government Code, Chapter 2272, Client is prohibited from entering into a contract with an abortion provider or an affiliate of an abortion provider. Contractor certifies that it is not an "affiliate" of an abortion provider as that term is defined in Texas Government Code 2272.001(3). Contractor voluntarily and knowingly acknowledges and agrees that the Agreement

shall be null and void should facts arise leading the Client to believe that the Contractor was an affiliate of an abortion provider at the time of procurement.

17.14 Prohibition of Contracts with Company that Discriminates Against Firearm and Ammunition Industries. In accordance with Chapter 2271 of the Texas Government Code, Client is prohibited from entering into a contract with a company that discriminates against firearm and ammunition industries, as those terms are defined under the law. By entering into this Agreement, Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. Contractor voluntarily and knowingly acknowledges and agrees that the Agreement shall be null and void should facts arise leading the Client to believe that the Contractor was or has become a company that discriminates against firearm and ammunition industries. 76

17.15 Prohibition of Contracts with Company that Boycotts Certain Energy Companies. In accordance with Texas Government Code 2274 of the Texas Government Code, Client is prohibited from entering into a contract with a company that boycotts certain energy companies, as those terms are defined under the law. By entering into this Agreement, Contractor verifies that it (1) does not boycott energy companies (as defined by Texas Government Code 809.001); and (2) will not boycott energy companies during the term of the Agreement. Contractor voluntarily and knowingly acknowledges and agrees that the Agreement shall be null and void should facts arise leading the Client to believe that the Contractor was or has become a company that boycotts energy companies.

17.16 Interpretation. It is the intent of Contractor and Client that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized representative on the date first written above.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

By: Cristy Soares

Printed Name: Cristy Soares

Title: Director of Purchasing Date: 7/13/21

Brad Bailey
Brad Bailey
Assistant Superintendent of Operations
July 1, 2021

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SOUTHEAST SERVICE CORPORATION

By: Seth A Ferriell

Printed Name: Seth A Ferriell

Title: CEO Date: 7/14/2021

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Resolution No. 052125-01 Authorizing Settlement of Eminent Domain Action and Purchase of Real Property Interests from WTF Harrell

RECOMMENDED ACTION
Adopt Resolution No. 052125-01 Authorizing Settlement of Eminent Domain Action and Purchase of Real Property Interests from WTF Harrell.

RATIONALE
The Board previously found and determined that public convenience and necessity require the acquisition of certain real property interests owned by WTF Harrell Property Management LLC for the construction of a school facility. In October 2024, the Board also authorized the District to pursue eminent domain of the property in the event the parties were unable to negotiate acquisition of the real property interests. After negotiations were initially unsuccessful, the District filed an eminent domain matter to acquire the necessary real property interests. The parties have continued to negotiate and have come to a successful resolution of the matter. The parties now seek to enter into a settlement agreement and purchase the real property interests from WTF Harrell.

BUDGET PROVISIONS
2023 Bond Program - $105,000

RESOURCE PERSONNEL
Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services
Chad Crowson – General Counsel

ATTACHMENTS
Resolution No. 052125-01

MEETING DATE
May 21, 2025

Resolution No. 052125-01 of the Lake Travis ISD Board of Trustees

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT FINDING THE PUBLIC NECESSITY TO AUTHORIZE SETTLEMENT OF EMINENT DOMAIN ACTION AND PURCHASE OF REAL PROPERTY INTEREST.

WHEREAS, by Resolution No. 061924-04 dated June 19, 2024, the Board of Trustees of Lake Travis Independent School District authorized the pursuit of potential acquisition of easements for the purpose of the location of a District facility and infrastructure.

WHEREAS, by Resolution No. 101624-06 dated October 16, 2024, the Board of Trustees of Lake Travis Independent School District authorized the Superintendent, or designee, to make an offer to the owner of the potential property based on its appraised value, or alternatively if necessary, pursue eminent domain proceedings as authorized by law.

WHEREAS, on October 25, 2024, the Lake Travis Independent School District filed a Petition for Condemnation in Travis County, Texas and sought judgment vesting in the Lake Travis Independent School District an easement to certain land described herein. This matter is identified as *Lake Travis Independent School District v. WTF Harrell Property Management LLC*, No. C-1-PB-24-002489, in Probate Court No. 1, Travis County, Texas.

WHEREAS, the Lake Travis Independent School District and WTF Harrell Property Management LLC (the "Parties") seek to resolve the pending litigation and finalize the real property transaction.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District:

> That the Superintendent, acting through his staff or other authorized designee be, and hereby is, authorized to execute any and all documents necessary to settle the pending eminent domain suit identified as *Lake Travis Independent School District v. WTF Harrell Property Management LLC*, No. C-1-PB-24-002489, in Probate Court No. 1, Travis County, Texas, for $105,000 and in accordance with any other terms discussed in closed session. The Superintendent, acting through his staff or other authorized designee be, and hereby is, further authorized to execute any and all documents necessary to finalize the closing and acquisition of the real property interests described herein, including but not limited to the Utility Easement Agreement between the Parties.

Tract Descriptions:

TRACT 1: A tract of land containing approximately 0.0523 acre (2,279 square feet) out of the WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road.

TRACT 2: A tract of land containing approximately 0.1489 ACRE (6,486 square feet) out of the WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road.

Adopted this 21st day of May, 2025 by the Board of Trustees of the Lake Travis Independent School District.

_____
Board President

_____
Board Secretary

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Food and Nutrition Meal Prices for 2025-2026

RECOMMENDED ACTION
For approval with the Consent Agenda.

RATIONALE
To provide an informational update to the Board and community regarding the student meal prices for next school year. The district increased breakfast and lunch meal prices by $0.10 each for the 2024-2025 school year. Since then, food costs continue to rise, and this trend is expected to continue into the 2025-2026 school year. Prior to the current school year's price increase, the district had not adjusted breakfast meal prices in six years and had not adjusted lunch meal prices in four years. Although the school year 2025-2026 USDA paid lunch equity tool has not been released, we know that the USDA paid lunch equity meal price is $3.84, and the district's current average lunch meal price is $3.56. Therefore, it is recommended that the district increase both breakfast and lunch meal prices for the 2025-2026 school year by $0.10 each.

BUDGET PROVISIONS
2025-2026 Food Service Fund

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Lianka Soliz – Senior Director of Food and Nutrition Services & Transportation

ATTACHMENTS
Student Meal Prices for 2025-2026

MEETING DATE
May 21, 2025

Lake Travis ISD
Food & Nutrition Department
2025-2026

Breakfast	2024-2025	2025-2026	Change
Elementary Schools	$1.85	$1.95	$0.10
Middle Schools	$1.95	$2.05	$0.10
High School	$2.05	$2.15	$0.10

Lunch	2024-2025	2025-2026	Change
Elementary Schools	$3.25	$3.35	$0.10
Middle Schools	$3.40	$3.50	$0.10
High School	$4.05	$4.15	$0.10

AGENDA ITEM ACTION SHEET

AGENDA ITEM
School Health Advisory Council - Human Sexuality Curriculum Materials for Consideration

RECOMMENDED ACTION
For approval with the Consent Agenda.

RATIONALE
Pursuant to Texas Education Code (TEC) §28.004, each school district is required to establish a local School Health Advisory Council (SHAC) to assist the district in ensuring that local community values are reflected in the district's health education instruction, including instruction relating to human sexuality. The statute further prescribes the responsibilities of the SHAC, including the review and recommendation of curriculum materials pertaining to human sexuality instruction.

In accordance with the statutory requirements, the SHAC has conducted a review of human sexuality instructional materials and is presenting its recommended materials for consideration. As required by TEC §28.004(j), prior to the adoption of any such curriculum materials, the Board of Trustees must hold a public hearing to allow for community input and public comment regarding the proposed instructional resources.

The April public hearing and May school board meeting fulfills the statutory obligation to ensure transparency in the curriculum adoption process and to afford parents and stakeholders the opportunity to review and provide feedback on the instructional materials under consideration. The hearing is a critical component of the district's compliance with state law and supports the Board's role in safeguarding the educational and health interests of students in alignment with local community standards.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Tasha Barker - Assistant Superintendent of Organizational Services

ATTACHMENTS
School Health Advisory Council - Human Sexuality Curriculum Materials for Consideration Public Hearing Presentation
Appendix - Human Sexuality Curriculum Provider Checklist and Scoring Results

MEETING DATE
May 21, 2025

School Health Advisory Council
Human Sexuality Curriculum
Public Hearing
April 16, 2025

Texas Law

The Texas Education Code (TEC) is the state law that governs Texas public education.

TEC §28.004 outlines the requirements for sexual health education instruction (called Human Sexuality Instruction specifically in the code); indicates the need for every school district to have a School Health Advisory Council (SHAC) that reviews sexual education instruction; and describes the process for curriculum adoption, parent notification, and parent consent.

Why the Review?

- Lifeguard was discontinued and replaced with Choosing the Best.

- The SHAC saw this as an opportunity to review the updates and explore other options to ensure we're using the best fit for our students.

Gathering Insights

- Reviewed 26 districts in ESC Region 13 and fast-growing areas across Texas
- Identified current human sexuality programs in use
- Explored trends and alternative resources

Timeline

Date	Agenda
08/28/24 - 12/4/24	SHAC Committee investigated and reviewed available materials
12/13/24, 1/9/25	Review/discuss final 3 providers under consideration: *Choosing the Best, Goodheart Wilcox, and Living Well Aware*
1/13/25 - 1/26/25	Email was sent to SHAC with instructions for final review and scoring of human sexuality curriculum options - deadline to complete was 1/26/25
1/15/25	Group of science teachers from all grade levels met to review and score the human sexuality curriculum options currently under consideration of the SHAC
1/29/25	SHAC committee discussed curriculum options, voted to move forward with *Choosing the Best* and *Living Well Aware*
2/19/25	Sub-committee to present recommended curriculum provider (public meeting #1)
2/28/25, 4/16/25, 5/13/25	Public Review of Materials @ Education Development Center - Mesquite Room 2/28/25 - 8:00 a.m. - 4:00 p.m. 4/16/25 - 8:00 a.m. - 5:30 p.m. 5/13/25 - 8:00 a.m. - 4:00 p.m.
3/26/25	Sub-committee to address any follow up: re provider + committee vote (public meeting #2)
4/16/25	SHAC to present Human Sexuality education curriculum recommendation to the school board + Q&A (public meeting #1)
5/21/25	SHAC to address any follow ups: re: recommended provider + board vote for adoption (public meeting #2)
2025-2026 School Year	Implementation of approved curriculum

Curriculum Cost

Curriculum Name	Program Startup Cost	Cost Per Student	Total Cost
Choosing the Best	Free	Free	Free
Goodheart Wilcox (Textbook + Online Student Access for 1 year) *Does not include cost to train teachers and develop lessons*	None	$90.80	$326,880
Goodheart Wilcox (Textbook + Online Student Access for 3 years) *Does not include cost of time to train teachers and develop lessons*	None	$100.35	$361,260.00
Living Well Aware Access for 1 year *Does not include cost of time to train teachers*	$50 per teacher =$1500	$1695 per grade level =$6,780	$8,280

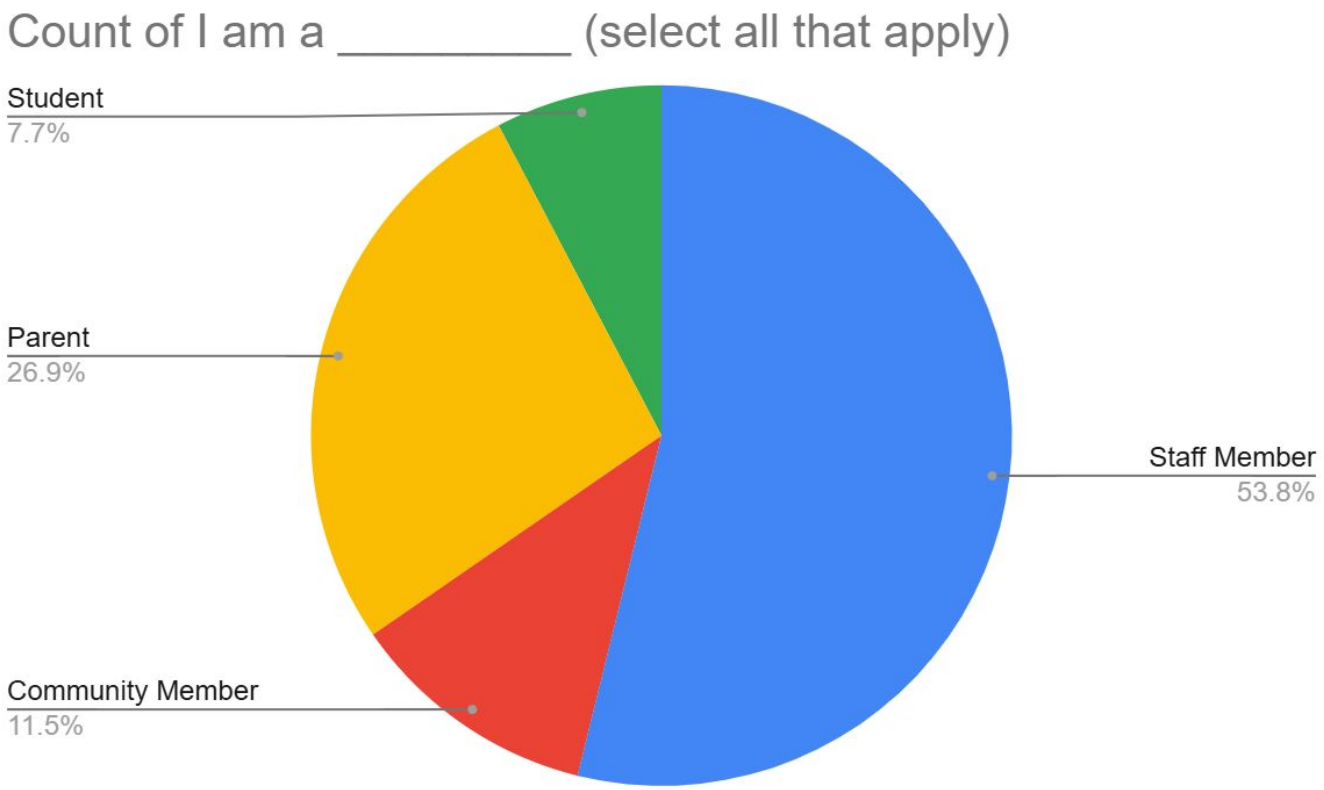
Teacher Training Cost

Curriculum Name	Avg. Cost of Sub Teacher	Avg. Cost of Curriculum PD	Total Cost for Teacher Training
Choosing the Best	$0	$0	$0
Goodheart Wilcox	$160 per day =$4,800	$30/hr for 8hr Day =$7,200	$12,000
Living Well Aware	$160 per day =$4,800	$0	$4,800

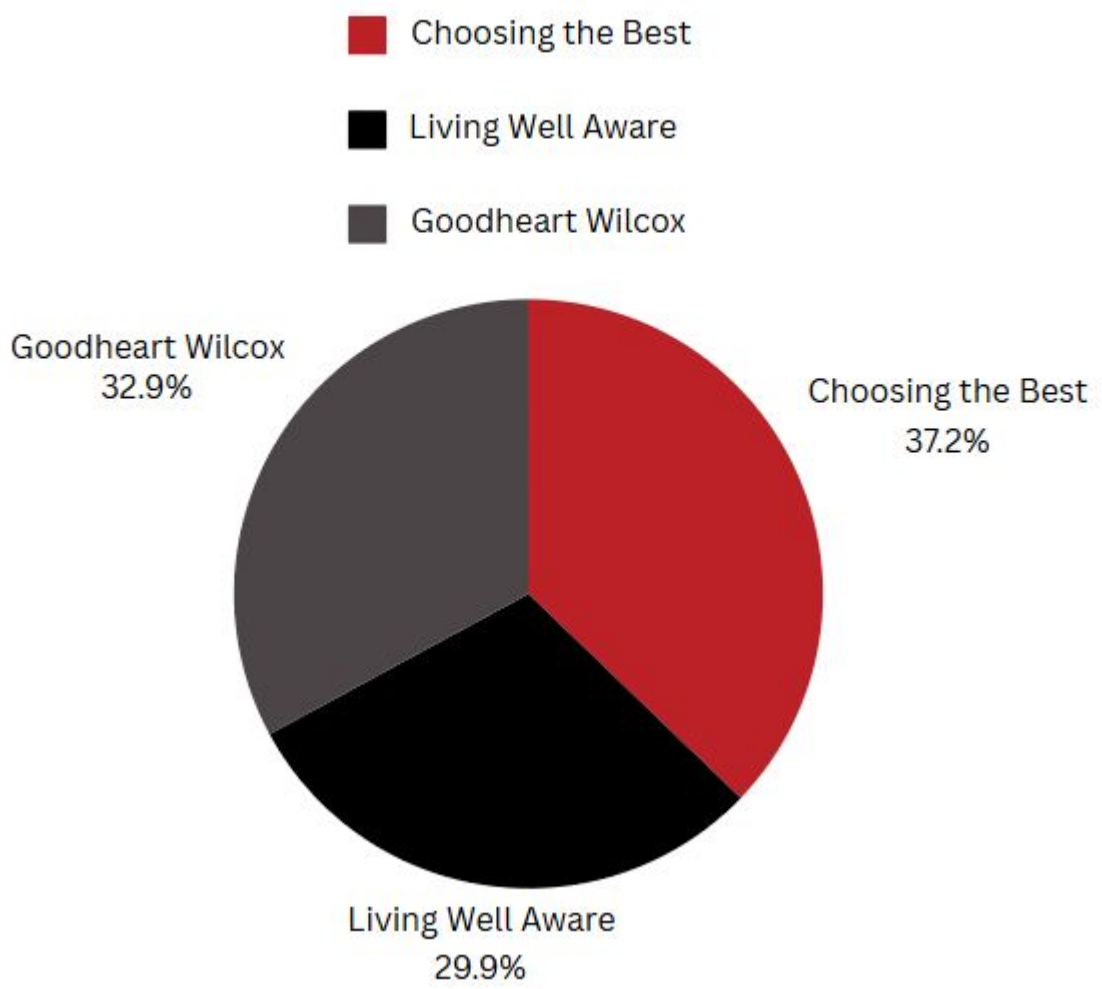
Instructional Planning

Curriculum Name	Instructional Time Needed
Choosing the Best	6 days needed- can be taught consecutively or once a week for 6 weeks
Goodheart Wilcox	12-14 days needed consecutively
Living Well Aware	12-14 days needed consecutively

Material Review and Analysis



Material Review and Analysis



Update to Curriculum Choices

01/29/25 - During the January SHAC meeting, the committee chose to vote on removing *Goodheart Wilcox* from consideration due to the cost of curriculum. Moving forward, the two remaining curriculum options would be *Choosing the Best* and *Living Well Aware*.

Choosing the Best and *Living Well Aware* both meet the Texas Education Code Legal Compliance (§28.004).

Material Review and Analysis

The Human Sexuality Curriculum Provider Checklist and Scoring Google Form consisted of -

- 18 questions
  - Topics reviewed -
    - Alignment to the TEKS
    - Medical accuracy
    - Student age appropriateness, accessibility, adaptability, and inclusivity/sensitivity
    - Moral and ethical values
    - Lesson clarity, engagement, real-world relevance, and supplemental materials
    - Teacher training requirements and ease of delivery
    - Implementation timeline and integration flexibility
    - External presenters
    - Financial investment / cost effectiveness

Material Review and Analysis

Percentage of Survey Responses Rated 4/Excellent on the Likert Scale

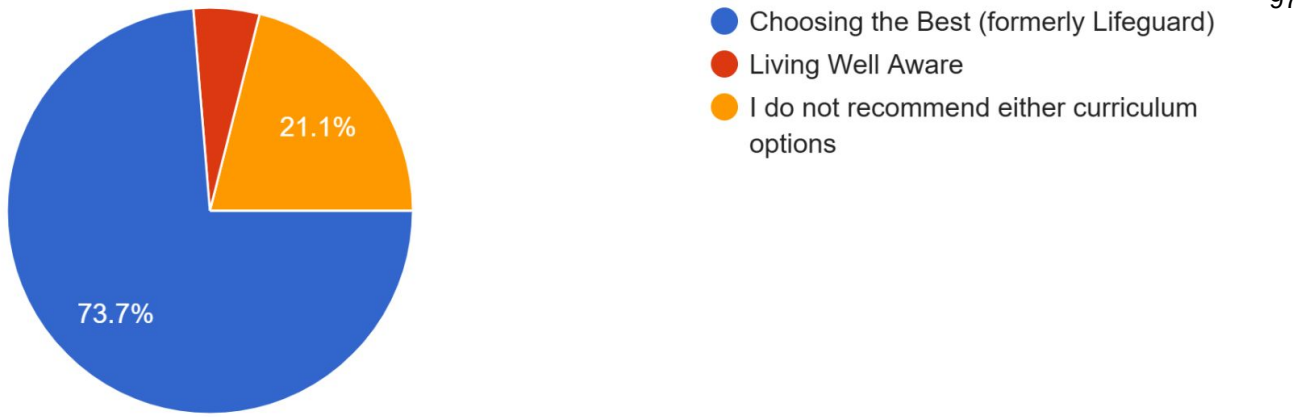
- **Choosing the Best - 75%**
  - 26 Survey Respondents
  - 18 Survey Questions
  - Respondents selected “4” 351 times across the 18 questions
- **Living Well Aware - 18%**
  - 20 Survey Respondents
  - 18 Survey Questions
  - Respondents selected “4” 65 times across the 18 questions

SHAC Members Voting Results

Curriculum Selected:
Choosing the Best

Voting Results:
19 SHAC members cast their votes;
14 voted in favor of Choosing the Best;
1 voted in favor of Living Well Aware,
4 voted for neither curriculum.

Please select the human sexuality curriculum you believe should be adopted and implemented for the 2025-2026 school year.
19 responses



Curriculum Recommendation

Based on the results of the human sexuality curriculum review form and the votes cast by the LTISD SHAC Committee, we recommend adopting and implementing the **'Choosing the Best'** curriculum for the 2025–2026 school year. The SHAC Committee offers the following rationale for its recommendation:

- **SBOE Approved & TEKS Coverage:** Choosing the Best covers all 6th–9th grade sexual health TEKS, while Living Well Aware lacks a 9th-grade curriculum.
- **Seamless Integration:** Aligns with our current reproductive health TEKS schedule with minimal disruption.
- **Cost & Resource Efficiency:** Most cost-effective and resource-efficient option.
- **Teacher Preference:** Strong support for facilitator-led delivery.
- **Community Support:** The SHAC committee's analysis showed overwhelming support for Choosing the Best.

Q&A

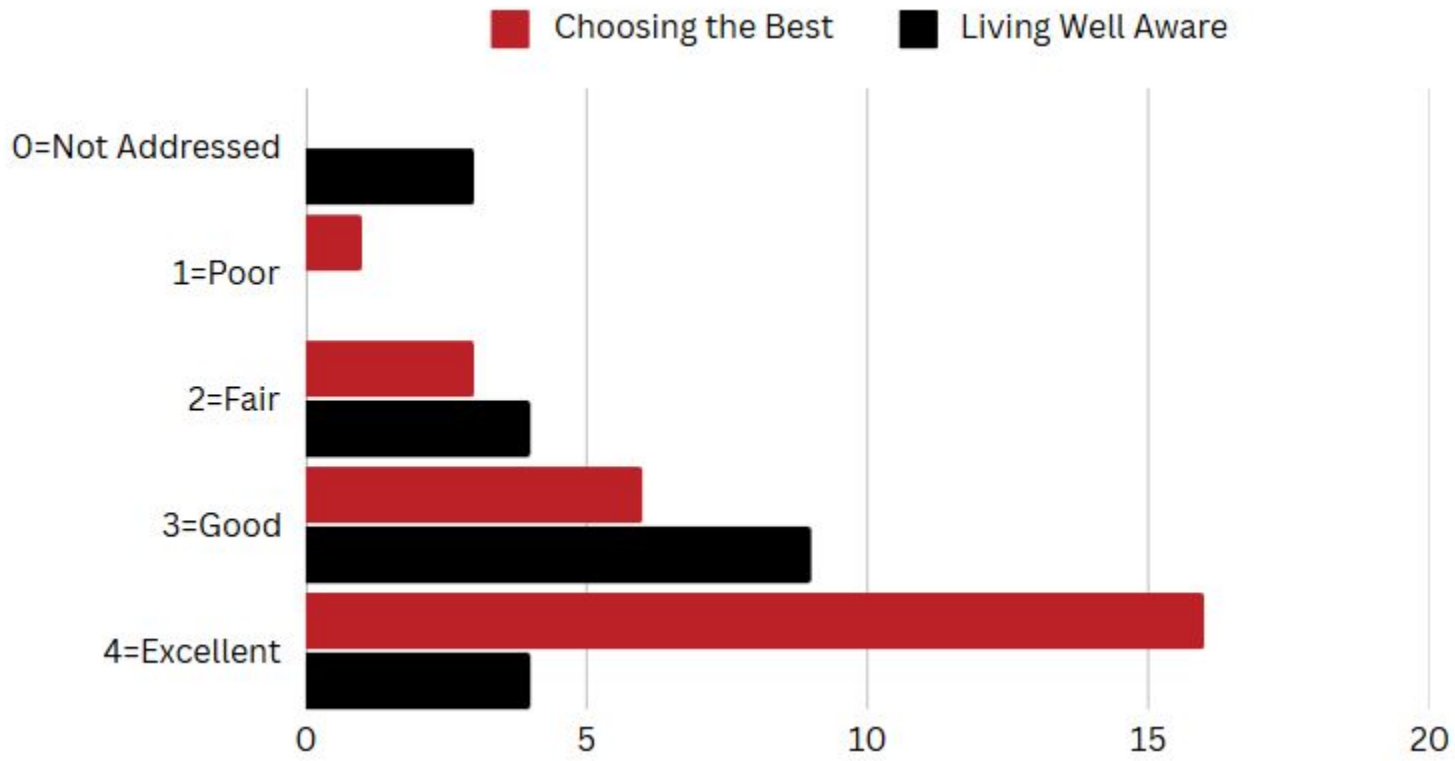
Appendix

School Health Advisory Council
Human Sexuality Curriculum - Material Review and Analysis

Public Hearing
April 16, 2025

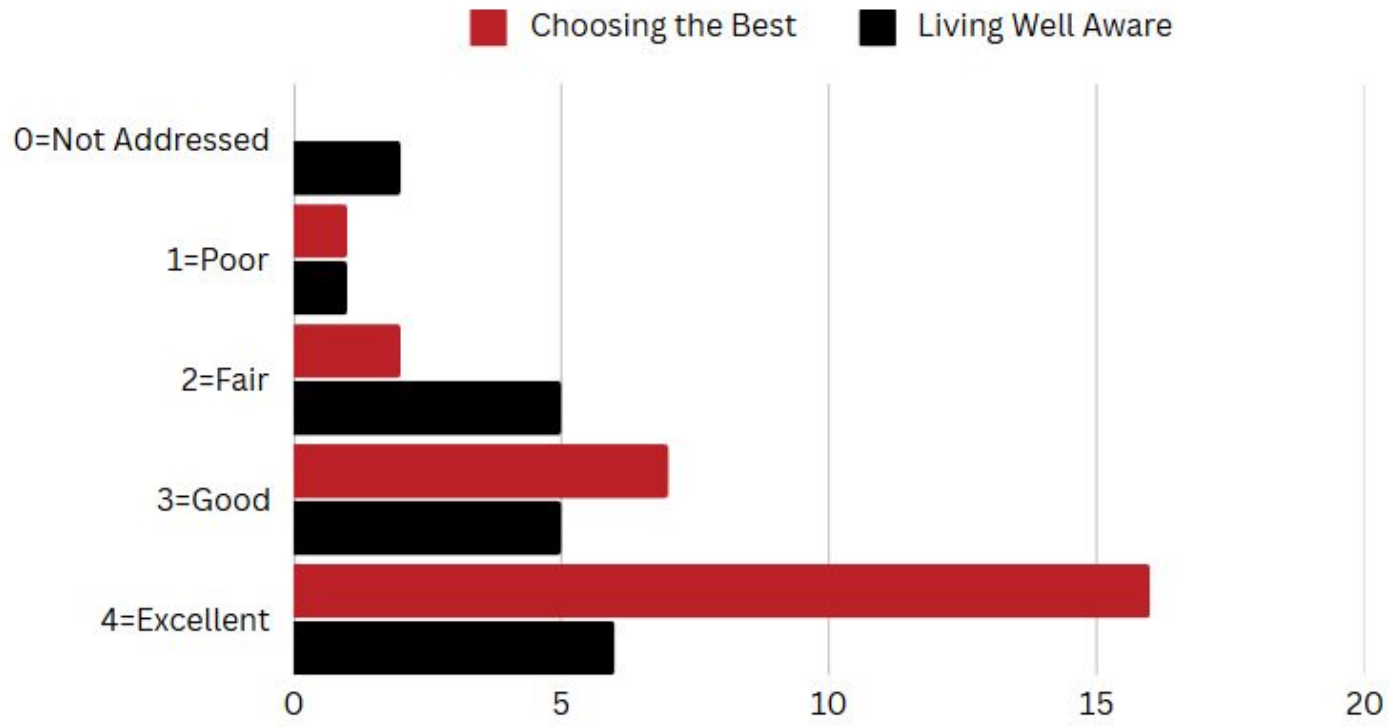
Material Review and Analysis

Alignment with TEKS Healthy Relationships: Covers TEKS topics about healthy relationships, boundaries, and consent.



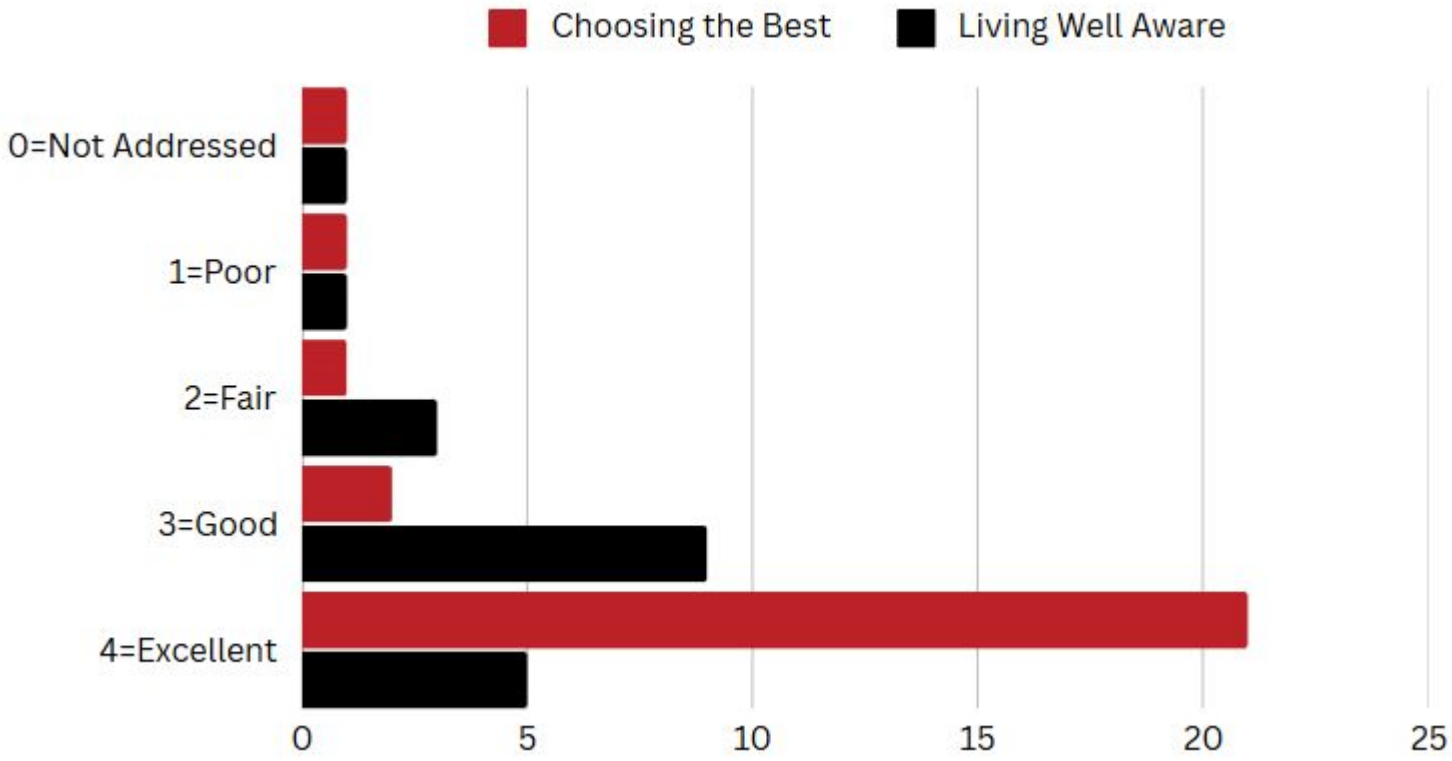
Material Review and Analysis

Alignment with TEKS - STIs and Contraceptive Effectiveness: Aligns with TEKS requirements to analyze the effectiveness and risks of contraception.



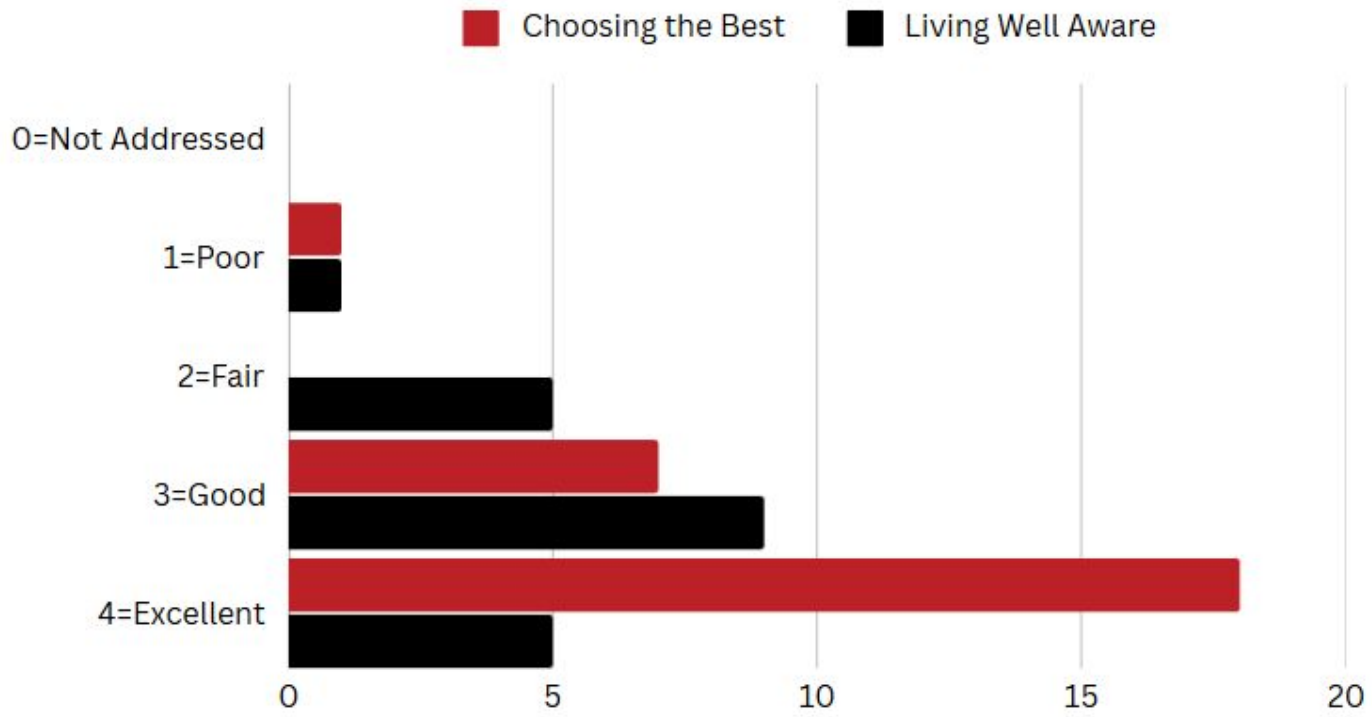
Material Review and Analysis

Medical Accuracy - All information presented is scientifically accurate and verified by health experts.



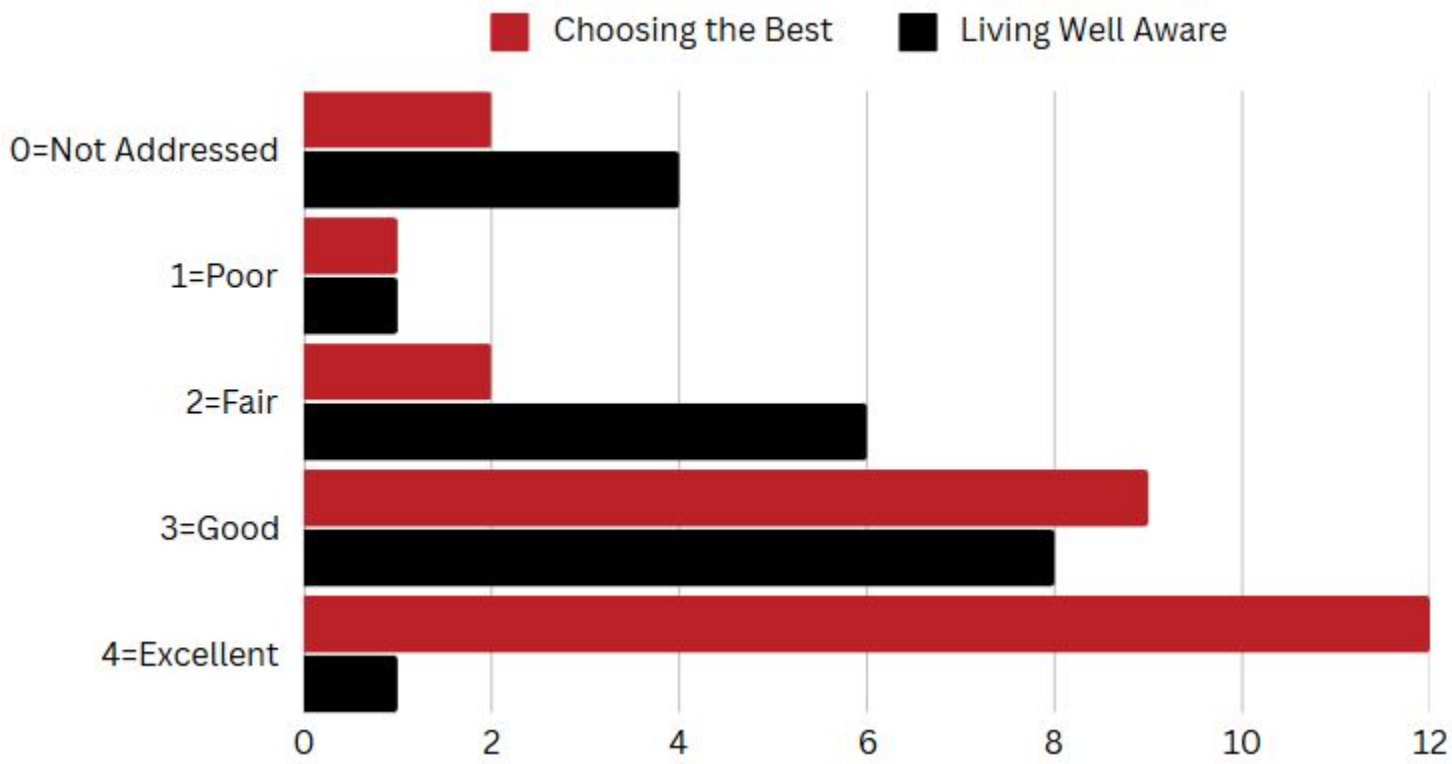
Material Review and Analysis

Age Appropriateness - The curriculum is developmentally appropriate, handles sensitive topics in a manner appropriate for each grade level, and the content is tailored to the maturity level of secondary students, avoiding unnecessary complexity or insensitivity.



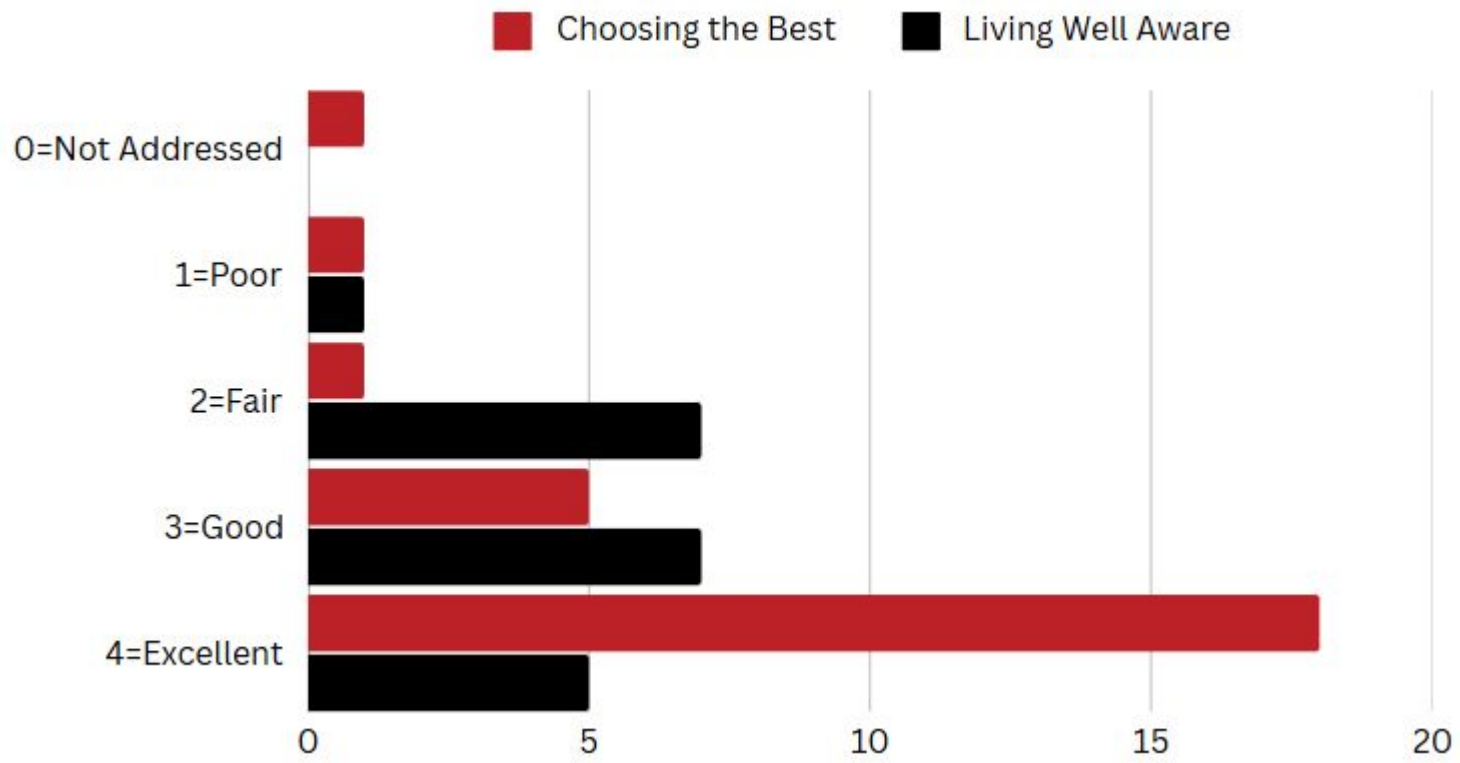
Material Review and Analysis

Student Accessibility and Adaptability - The curriculum is accessible and adaptable for students with diverse learning needs (e.g., special education, English learners).



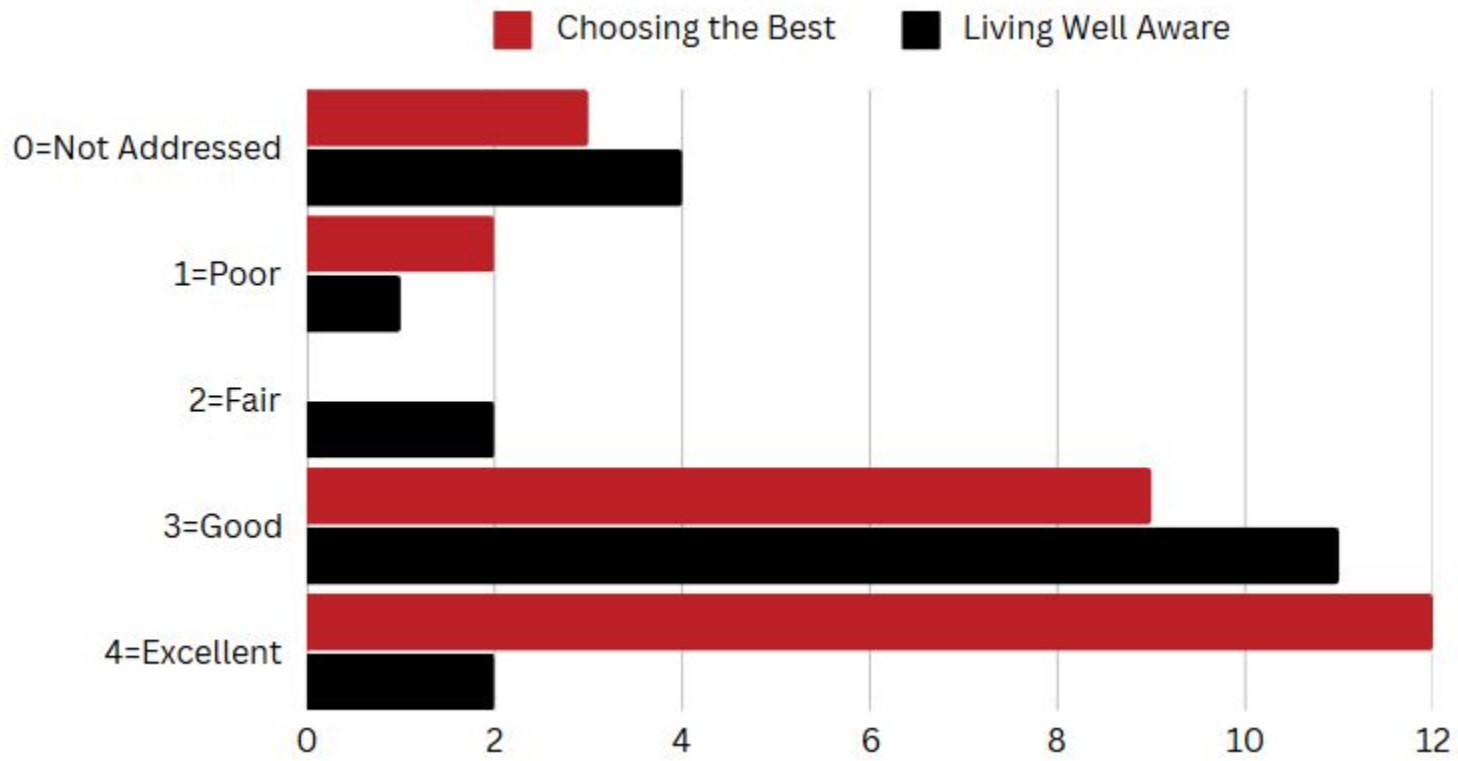
Material Review and Analysis

Moral and Ethical Standards- The product respects and upholds the moral and ethical values important to our community.



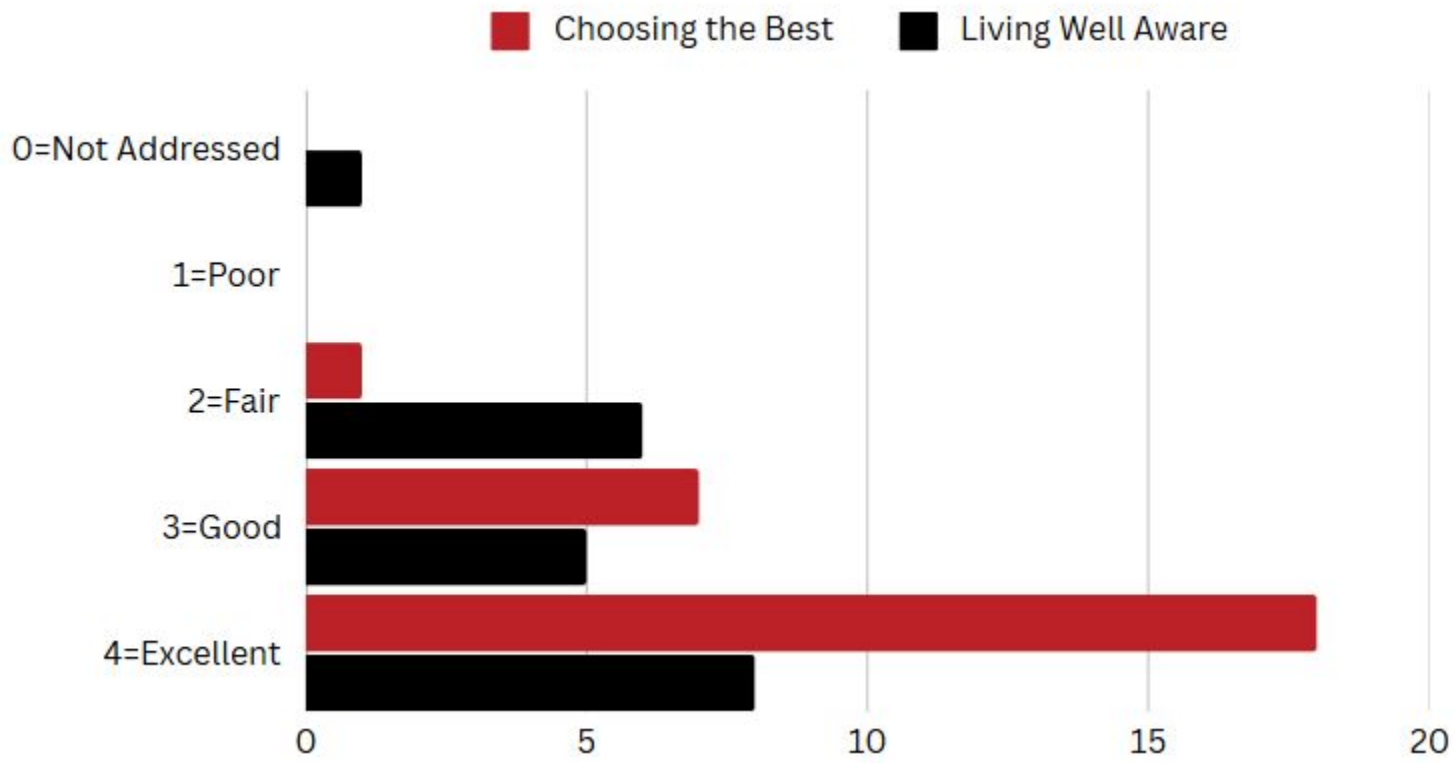
Material Review and Analysis

Inclusivity and Sensitivity - Cultural and Gender Sensitivity: Respects diverse cultures and genders.



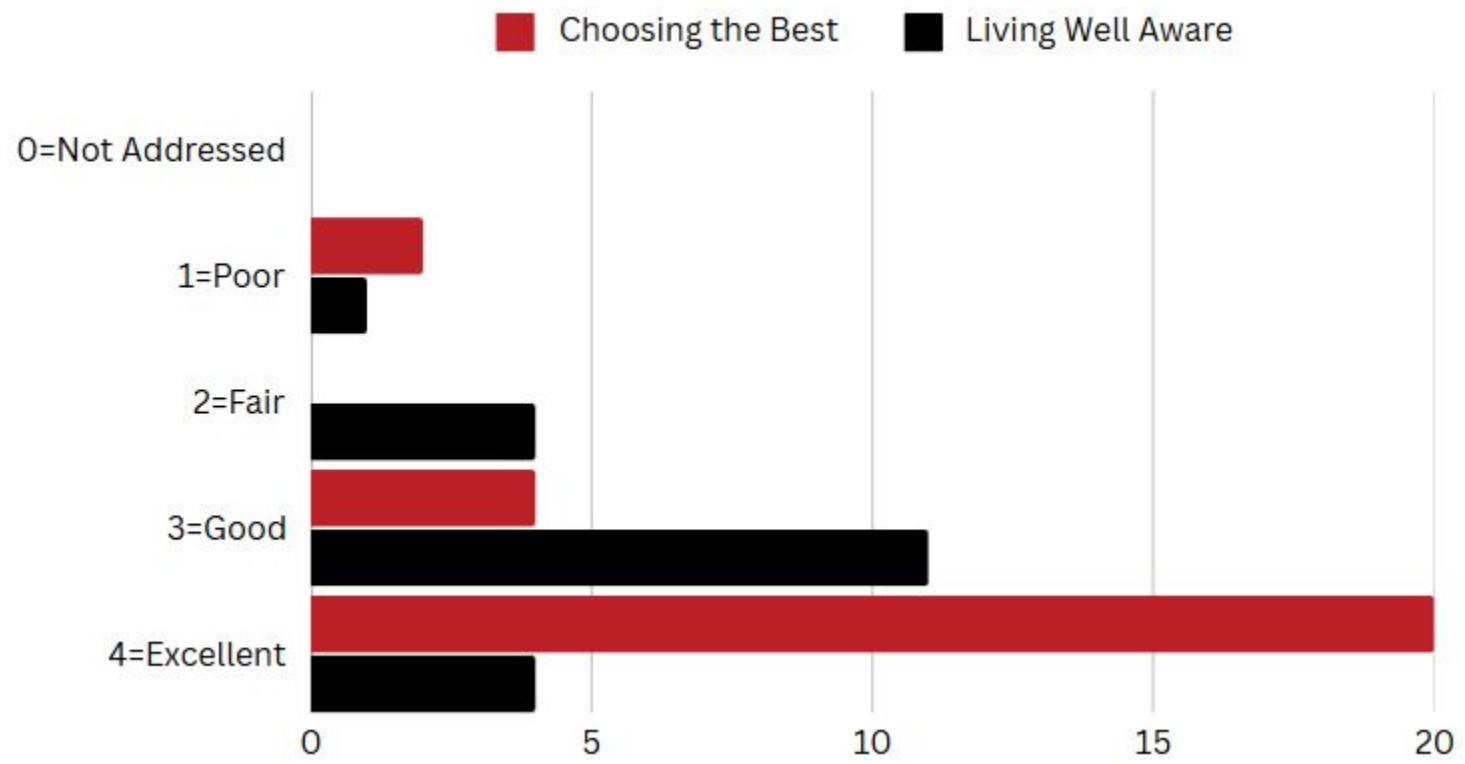
Material Review and Analysis

Interactive and Engaging - Includes hands-on activities, multimedia, or peer-to-peer learning opportunities.



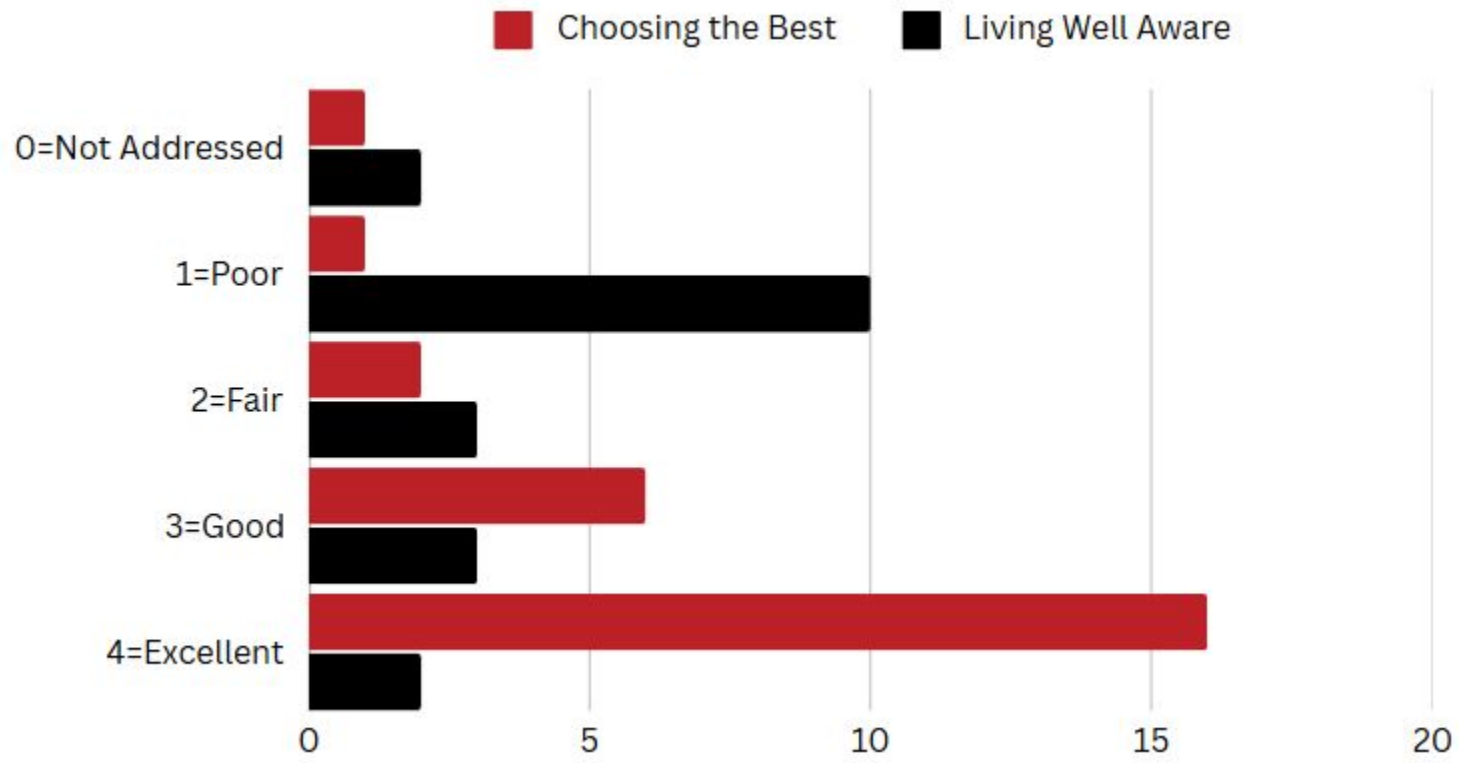
Material Review and Analysis

Real-World Relevance - The content connects to students' real-life experiences and challenges.



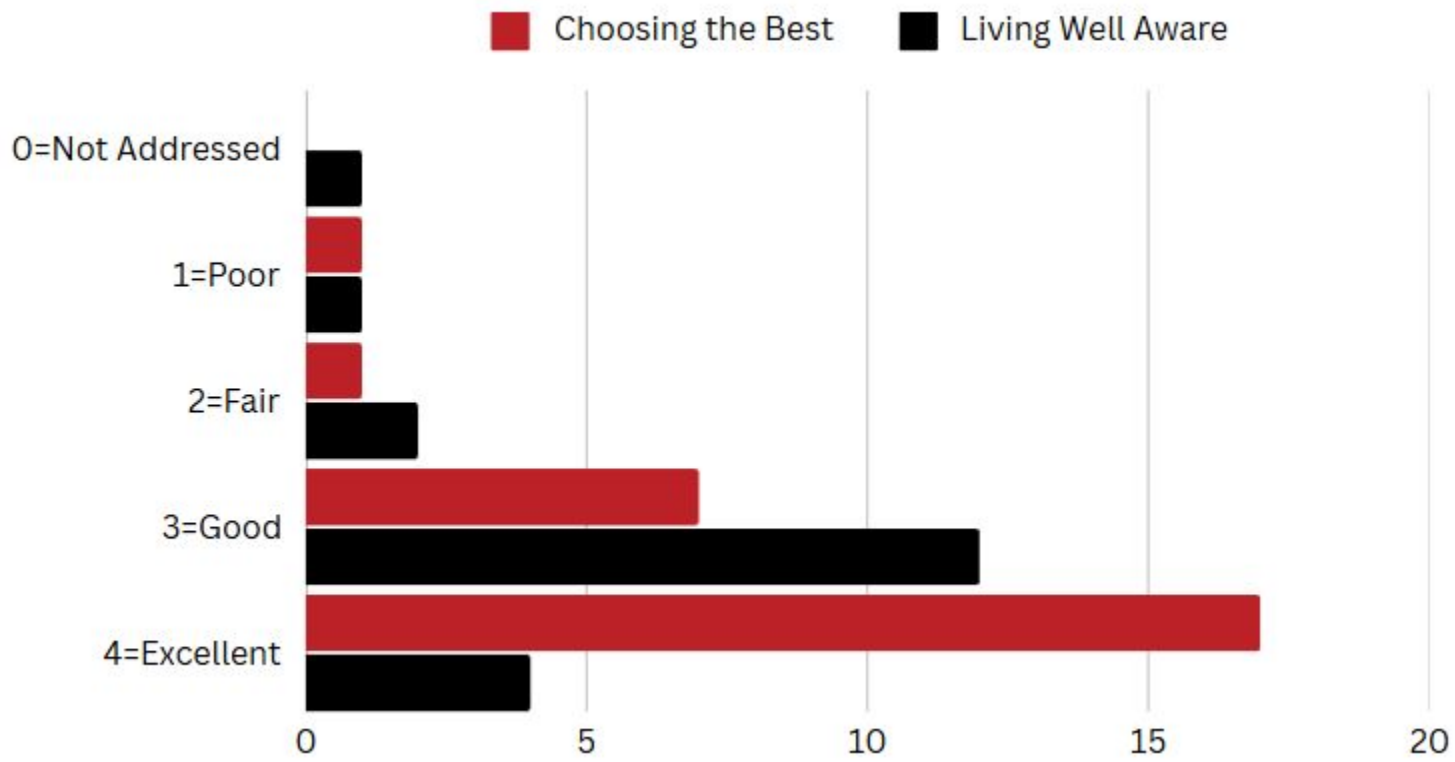
Material Review and Analysis

Teacher Training Requirements - The curriculum requires a manageable amount of training time (e.g., fewer than 6 hours).



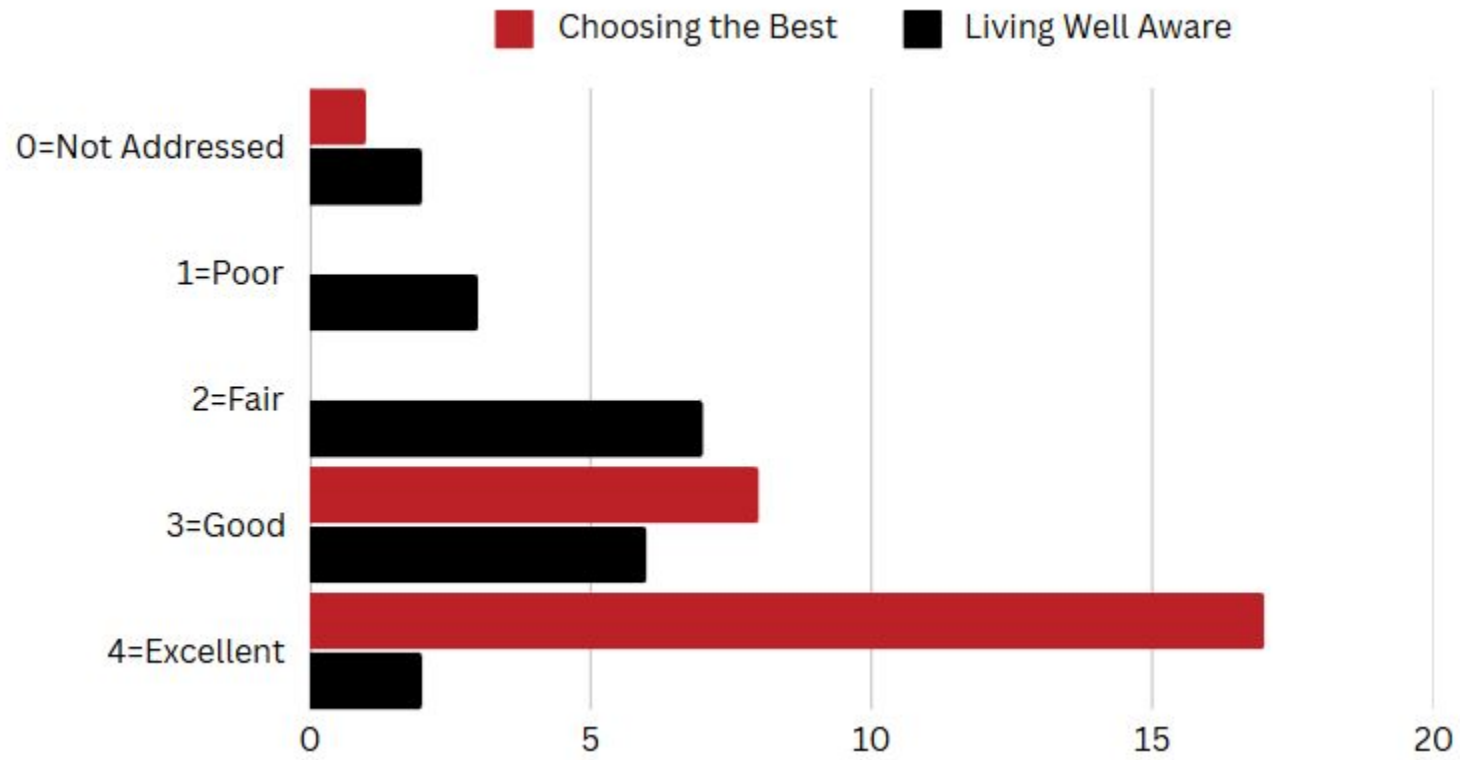
Material Review and Analysis

Lesson Clarity - Lesson plans and objectives are well-defined and easy to follow.



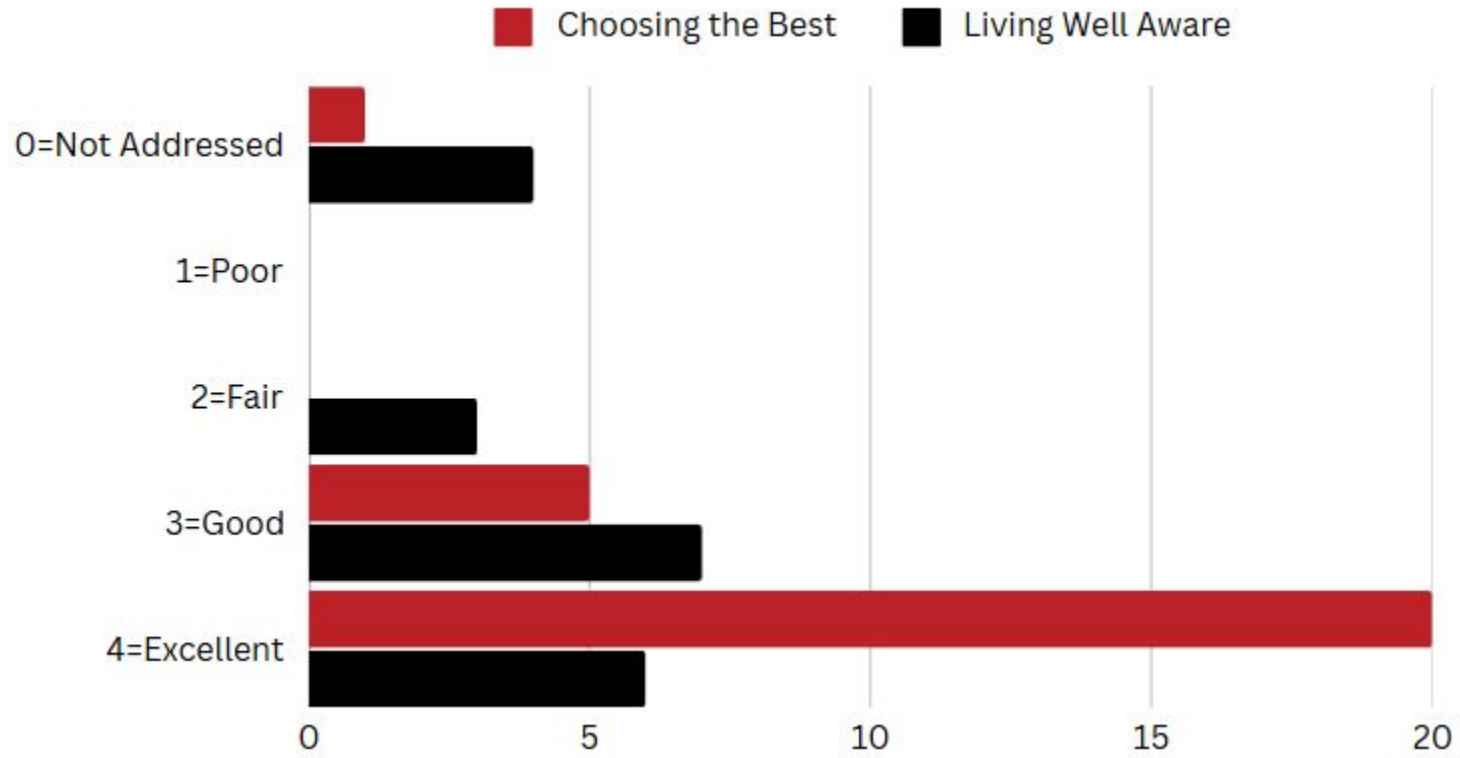
Material Review and Analysis

Ease of Delivery - The materials are clear, user-friendly, and adaptable to various teaching styles and years of experience (e.g., novice/tenure teacher).



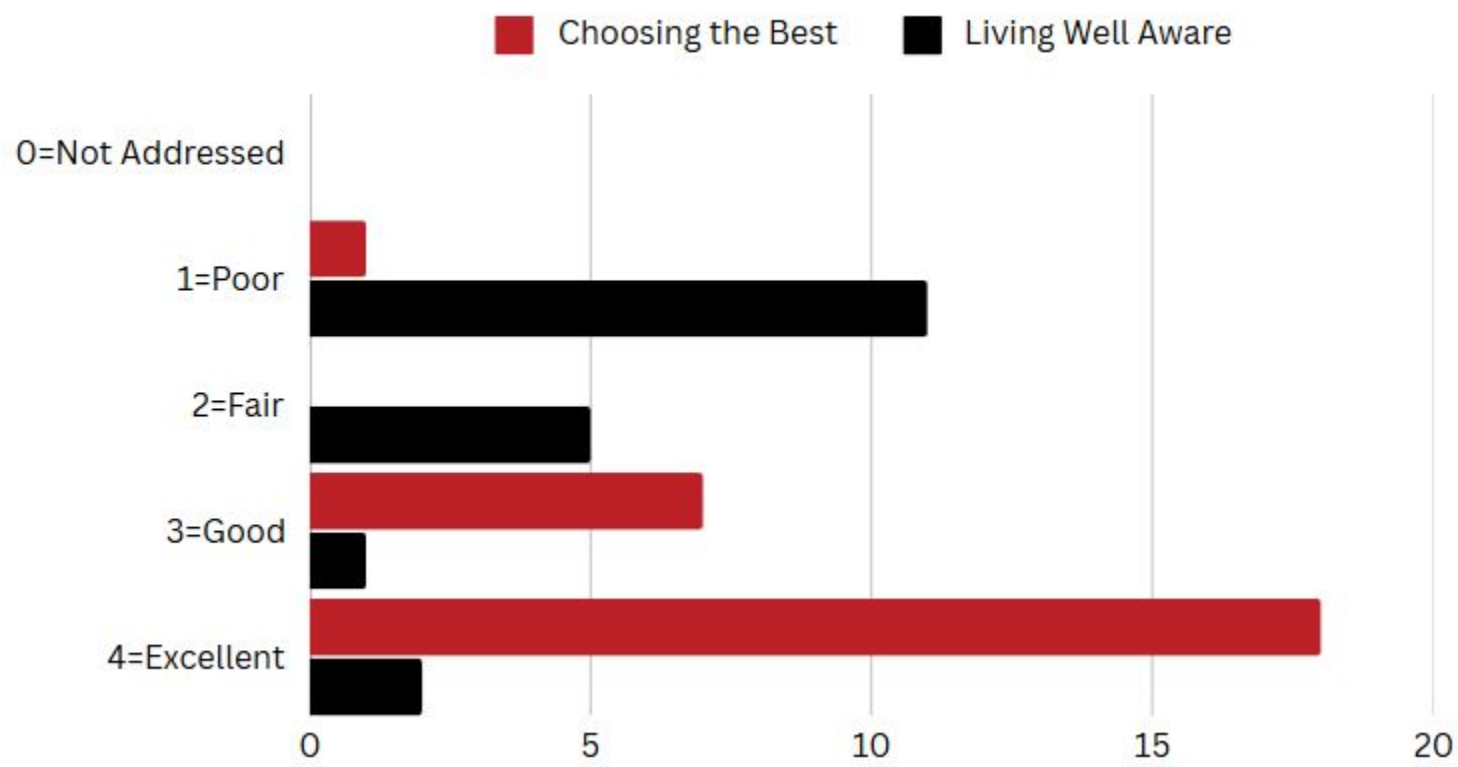
Material Review and Analysis

Supplemental Resources for Teachers - The curriculum provides adequate teaching support materials (e.g., guides, videos, handouts) for teachers to access.



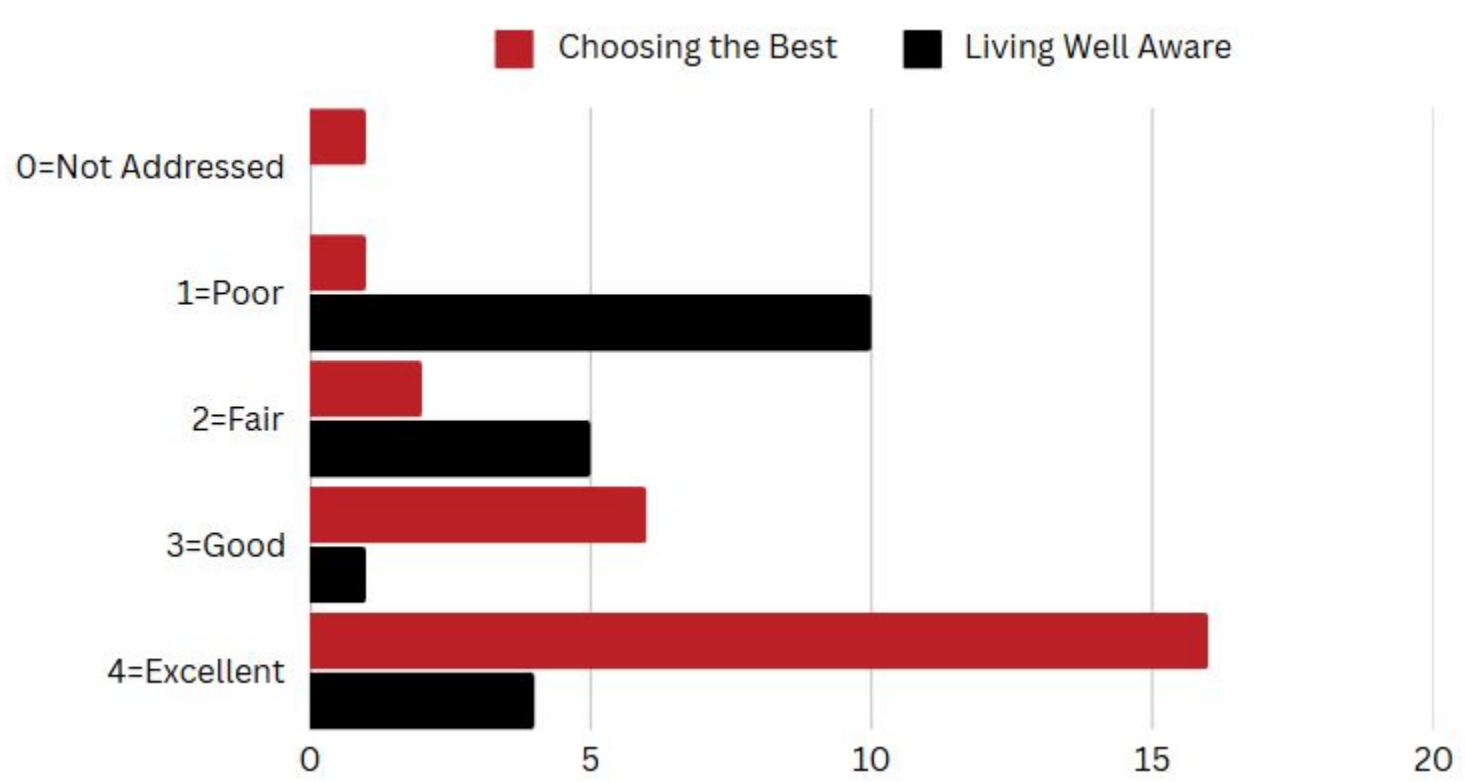
Material Review and Analysis

Implementation Timeline - The curriculum can be implemented/taught within a reasonable timeframe.



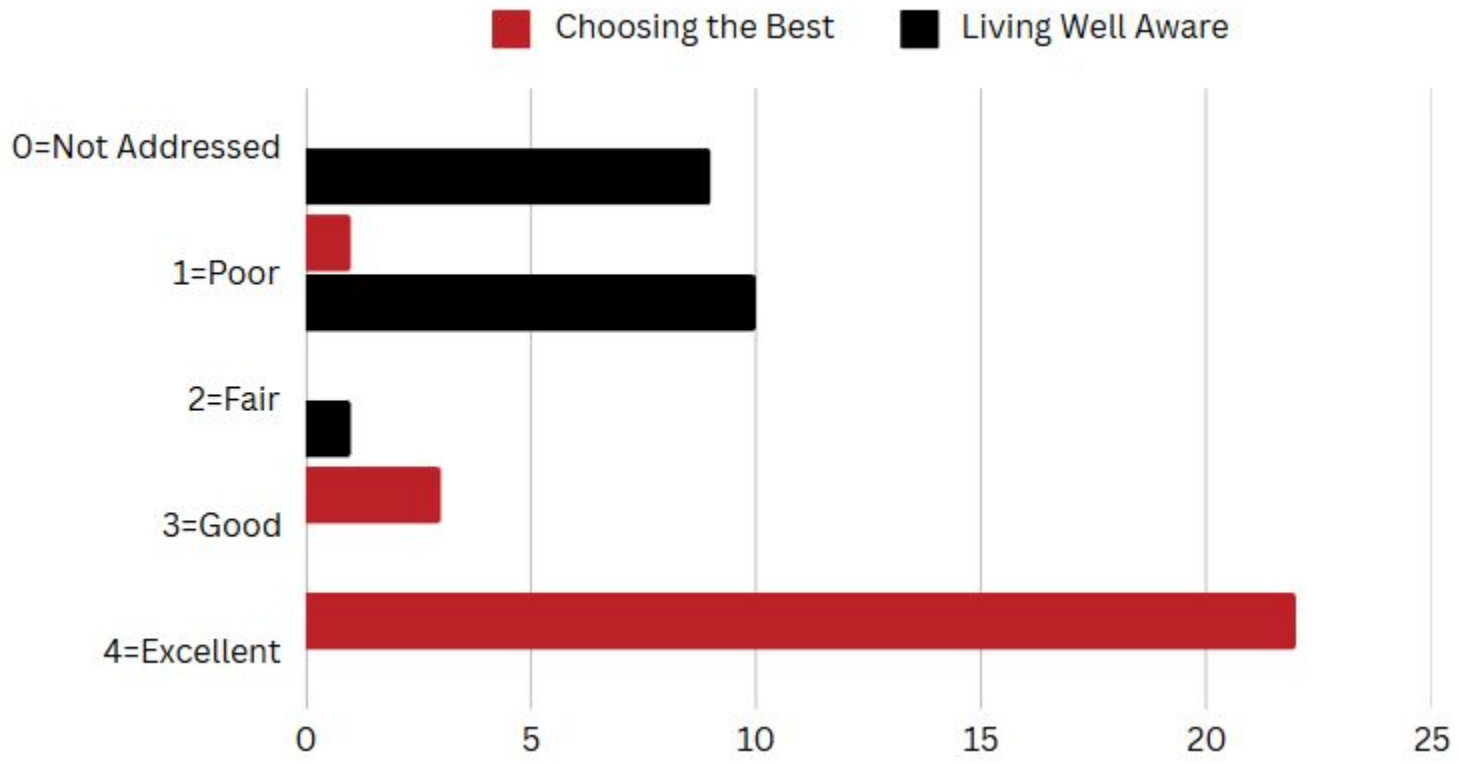
Material Review and Analysis

Integration Flexibility - The curriculum can be easily integrated into the current school schedule without major disruptions.



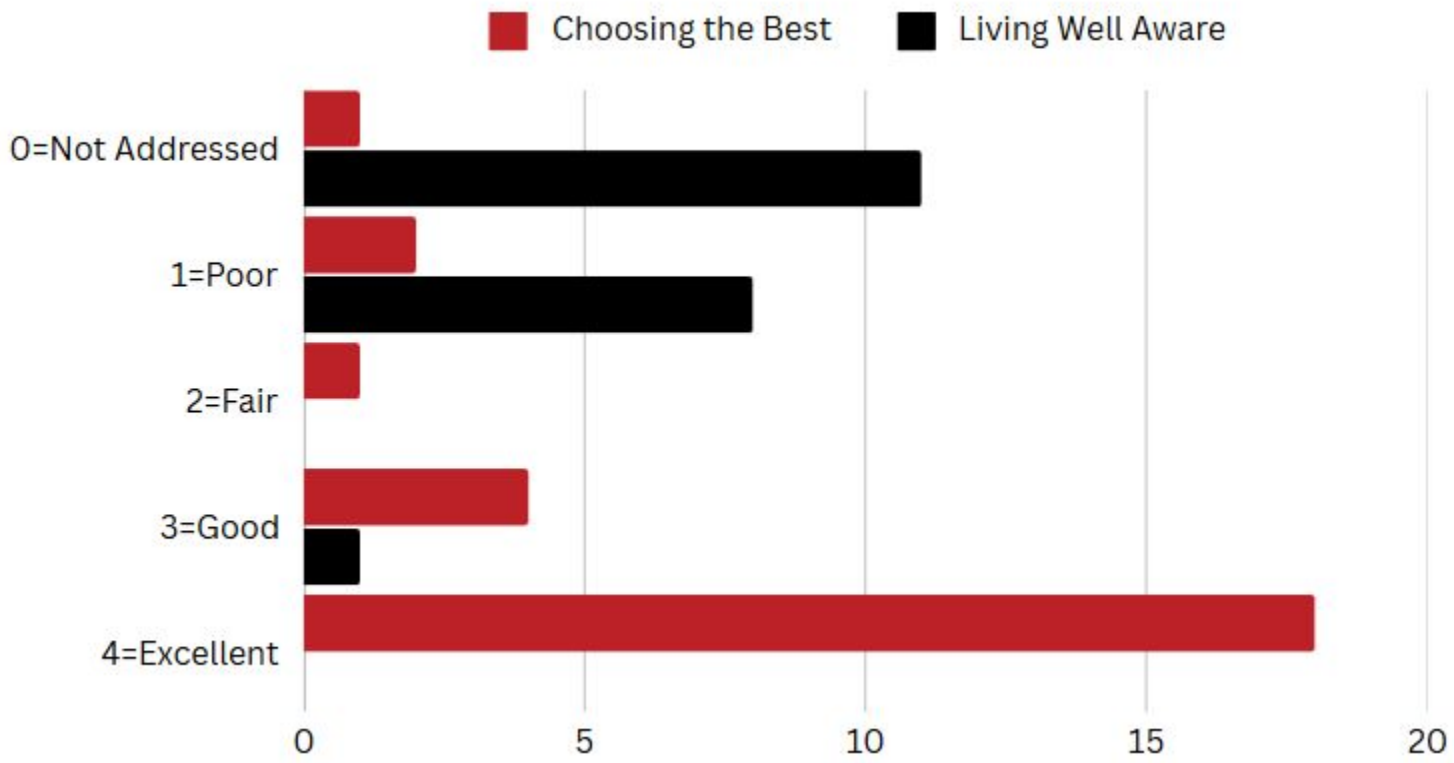
Material Review and Analysis

External Providers/Presenters - Outside instructors are readily available and affordable.



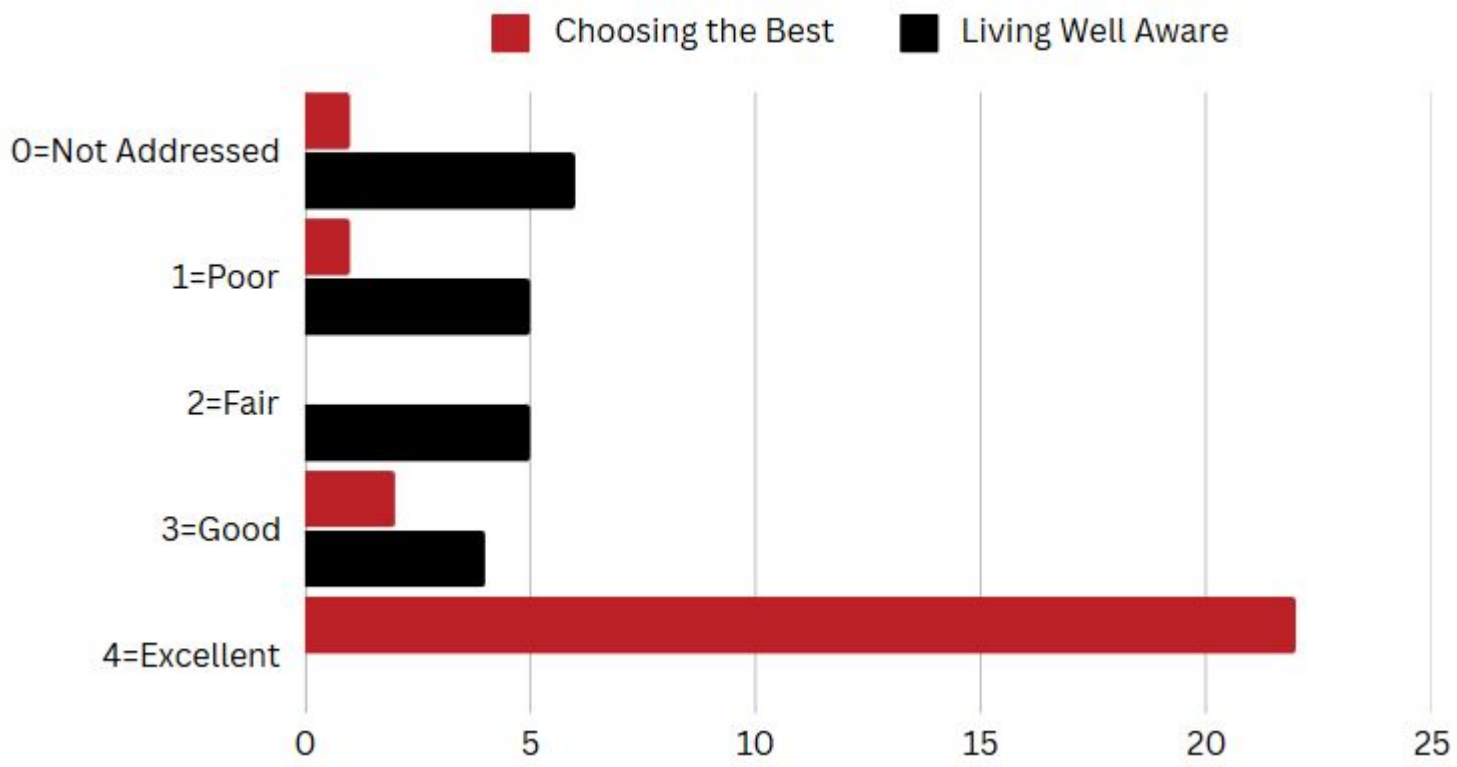
Material Review and Analysis

External Providers/Presenters - The effectiveness of third-party presenters (e.g., outsourced speakers or organizations) to deliver content directly to students.



Material Review and Analysis

Financial Investment / Cost Effectiveness - Ongoing Expenses: The curriculum does not require significant recurring costs (e.g., consumable materials, annual licensing).



AGENDA ITEM ACTION SHEET

AGENDA ITEM
Construction Agreements between Lake Travis ISD and Zapalac Reed and Approval of Guaranteed Maximum Price (GMP) for Lake Travis High School Phase II of Cavalier Drive

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approval and execution of the construction agreements between Lake Travis ISD and Zapalac Reed and authorization of the approve the Guaranteed Maximum Price of $1,997,279 for the Lake Travis High School Phase II of Cavalier Drive.

RATIONALE
In December 2023, the Board approved Zapalac Reed as Construction Manager at Risk for the construction of Lake Travis High School Cavalier Drive Phase II. The administration is seeking approval to execute the agreements with Zapalac Reed and the GMP in the amount of $1,997,279. The project consists of the relocation of the overhead utility lines to underground, and connecting secondary service to the Women's Field House, new Competition Gym and Cavalier Stadium buildings.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
Zapalac Reed A133-2019
Zapalac Reed A201-2017
Zapalac Reed Exhibit GMP

MEETING DATE
May 21, 2025

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

PHASE II - Lake Travis High Cavalier Drive

THE OWNER:
(Name, legal status and address)

Lake Travis Independent School District
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300 (telephone)

THE ENGINEER / ARCHITECT:
(Name, legal status and address)

Malone Wheeler
5113 Southwest Parkway, Suite 260
Austin, TX 78735
512-899-0601 (telephone)

As used in this A201-2017 General Conditions, all references to "Architect" shall be construed to include the Engineer listed above.

THE CONTRACTOR:

Zapalac/Reed Construction Co., LP
13215 Bee Caves Parkway
Bldg A, Suite #110
Bee Caves, TX 78738
512-306-8888 (telephone)

TABLE OF ARTICLES

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3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

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.

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

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18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including 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. Unless specifically enumerated in the Agreement, 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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

§ 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. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

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

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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

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

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

(Paragraphs deleted)
§ 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
Intentionally deleted. .

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

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

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

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

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

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enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- **.1** Contract Modifications signed by Contractor and Owner.
- **.2** Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- **.3** Agreement – AIA Document A133-2019, as modified by the Owner for the Project
- **.4** General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- **.5** Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

§ 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 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor,

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Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the any reserved rights

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed $100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

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2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Intentionally deleted.

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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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 a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those

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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.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

§ 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 bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

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

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

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

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

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

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§ 3.4 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. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

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

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

3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 Intentionally deleted.

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

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

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§ 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. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 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 shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.8 Warranties shall become effective on a date established by the 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, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

§ 3.6 Taxes

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

(Paragraphs deleted)

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

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

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this 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 the construction process which require the issuance of a permit shall be at Contractor's sole cost.

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3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

- **.1** The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.
- **.2** Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.
- **.3** The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 The Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

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§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

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

§ 3.10.3 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working

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additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

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

3.11.1 Contractor shall make available, at the Project site, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the 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.

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§ 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.

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

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§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.14 Cutting and Patching

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

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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

§ 3.15.3 The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART

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BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

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§ 3.19 REPRESENTATIONS AND WARRANTIES

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

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 ANTITRUST VIOLATION

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Intentionally deleted.

§ 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 Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor,

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and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

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

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

§ 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.

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

§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 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 at no additional expense to the Owner.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

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

§ 5.4 Contingent Assignment of Subcontracts

(Paragraphs deleted)

§ 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights 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 may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual 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 notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

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

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

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

§ 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 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.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

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.1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15) of the cost (10% for change orders to be paid out of any contingency allowance).

.2 For the Contractor, for the Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, fifteen percent (15%) of the cost.

.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2 Change Orders

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

.1 The change in the Work;

.2 The amount of the adjustment, if any, to the Contract Sum; and

.3 The extent of adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

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

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

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.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 applicable sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved 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.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus overhead and profit as set forth in Section 7.1.4. 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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

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

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor. 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.

8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in Section 4.5 of the AIA A101, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

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

§ 8.3.3 This Agreement does not permit recovery of damages for delay by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

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

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect other data as reasonably requested by Owner or Architect. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date

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or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The 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. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

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

.1 Defective Work not remedied;
.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 suppliers for labor, materials or equipment;
.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 Damage to the Owner or a Separate Contractor;
.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
.7 Repeated failure to carry out the Work in accordance with the Contract Documents;
.8 Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
.9 Evidence of financial inability to perform the Contract fully;
.10 Failure to submit record documents required by the Contract; or
.11 Failure of the Contractor to perform any other obligations of the Contract.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

§ 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 and the Owner 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.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

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

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

§ 9.9 Partial Occupancy or Use

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

§ 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 expressly agreed upon in writing, 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 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

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

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

§ 9.10.4

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(Paragraphs deleted)
Intentionally deleted.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

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

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

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

.1 employees on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

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

§ 10.2.5 CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER'S CONSULTANT'S, OR ARCHITECT'S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER'S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 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.

(Paragraphs deleted)

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 Intentionally deleted.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

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Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

§ 11.1.3 Intentionally deleted.

§ 11.1.4 Intentionally deleted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally deleted.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Intentionally deleted.

(Paragraph deleted)

§ 11.3.2 Intentionally deleted.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Intentionally deleted.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

(Paragraph deleted)

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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

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

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

12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

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

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

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

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or

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within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

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

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

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make

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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 for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least ten (10) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

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13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

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

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

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) 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 reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents.

.4 Intentionally deleted.

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

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.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

.6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 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' 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.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

§ 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 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor seven (7) days notice.

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders related to the Project.

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§ 14.4.3 In case of termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the Owner.

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

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Owner's decision, subject to the right of the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

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

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by

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reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

(Paragraphs deleted)

§ 15.1.7 Calculating Claims for Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

.1 No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 15.2 Initial Decision

§ 15.2.1 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

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

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

§ 15.2.6 Intentionally deleted. .

§ 15.2.6.1 Intentionally 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 Waiver of Lien

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

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§ 15.3 Mediation

§ 15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration

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

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. 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.

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

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ARTICLE 16 BUSINESS ETHICS

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

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

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.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

By:

Signature

Steve Flores, Interim Superintendent

(Printed name and title)

Date:

CONTRACTOR:
ZAPALAC REED CONSTRUCTION COMPANY

By:

Signature

Shad Zapalac, President of ZRC Management, LLC
General Partner of Zapalac/Reed Construction Co., LP

(Printed name and title)

Date:

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Additions and Deletions Report for

AIA® Document A201® – 2017

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PHASE II - Lake Travis High Cavalier Drive

...

Lake Travis Independent School District
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300 (telephone)

...

THE ENGINEER / ARCHITECT:

...

Malone Wheeler
5113 Southwest Parkway, Suite 260
Austin, TX 78735
512-899-0601 (telephone)

As used in this A201-2017 General Conditions, all references to "Architect" shall be construed to include the Engineer listed above.

THE CONTRACTOR:

Zapalac/Reed Construction Co., LP
13215 Bee Caves Parkway
Bldg A, Suite #110
Bee Caves, TX 78738
512-306-8888 (telephone)

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15 CLAIMS AND DISPUTES

16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including 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. Unless specifically enumerated in the Agreement, 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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

...

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~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

...

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient

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for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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~~**§ 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.~~

§ 1.1.7 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.

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

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

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

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

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

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.
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1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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...

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.

.2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.

.3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project

.4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

.5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

...

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

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The parties shall agree upon ~~written~~ protocols governing the transmission and use ~~of, and reliance on,~~ of Instruments of Service or any other information or documentation in digital form.

~~**§ 1.8 Building Information Models Use and Reliance**~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The ~~Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1,~~ Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed $100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~
Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.
§ 2.1.2 The Owner ~~shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.
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§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

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

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

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

...

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations 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.~~

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

§ 2.3.6 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

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~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, 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.~~**§ 2.4.1** If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to~~

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~~Article 15.~~**§ 2.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 3.1.2 The Contractor shall perform the Work in ~~accordance with the Contract Documents.~~a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4,~~ Section 2.3.4, 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of

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~~Sections 3.2.2~~ Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

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3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

...

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

3.3.6 The Contractor shall review contractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any

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

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

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

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

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

§ 3.4.1 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. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

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

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

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

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

3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 ~~Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.~~Intentionally deleted.

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

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

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3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

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§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 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 shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

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§ 3.5.7 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.8 Warranties shall become effective on a date established by the 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, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

~~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.~~**§ 3.6.1** The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7.2 ~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

~~**§ 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 14 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,~~

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~~performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

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

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this 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 the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

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.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, ~~profit,~~ 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

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the allowances under ~~Section 3.8.2.1~~ Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

...

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 The ~~Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a ~~Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and

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submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

...

§ 3.10.3 ~~The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this

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Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

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3.11.1 Contractor shall make available, at the Project site, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy~~ not be responsible for the adequacy of the performance and design criteria ~~provided~~ specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this ~~Section 3.12.10,~~ Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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

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§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the ~~Contract.~~ Contract and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. 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.~~materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

...

§ 3.15.3 The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

...

§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 ~~In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION

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3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse

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impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 ANTITRUST VIOLATION

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

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§ 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.~~Intentionally deleted.

...

§ 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.~~ Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

...

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the ~~Project. Communications~~ Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

...

§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

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

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§ 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.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 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.~~information at no additional expense to the Owner.

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

...

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

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§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

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

~~**§ 5.4.1** Each subcontract agreement for a 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; 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 assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 5.4.1 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- **.2** assignment is subject to the prior rights 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 may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension.

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

...

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this ~~Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~Contract.

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

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...

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. ~~The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.~~

...

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, fifteen percent (15) of the cost (10% for change orders to be paid out of any contingency allowance).

.2 For the Contractor, for the Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, fifteen percent (15%) of the cost.

.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

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

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.2 The amount of the adjustment, if any, ~~in~~ to the Contract Sum; and

.3 The extent of ~~the adjustment, if any, in the Contract Time.~~adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

...

.4 As provided in ~~Section 7.3.4.~~Section 7.3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in ~~the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ Section 7.1.4. In such case, and also under ~~Section 7.3.3.3,~~ Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this ~~Section 7.3.4~~ Section 7.3.4 shall be limited to the following:

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.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the ~~change.~~change only if the adjustment causes an extension of the Contract Time.

...

§ 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.~~ plus overhead and profit as set forth in Section 7.1.4. 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.

...

§ 8.1.2 The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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

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

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

...

8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in Section 4.5 of the AIA A101, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the~~

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~~Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

...

§ 8.3.3 This ~~Section 8.3~~ Agreement does not ~~preclude~~ permit recovery of damages for delay by ~~either party under other provisions of the Contract Documents.~~the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

...

§ 9.1.1 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under ~~Section 9.2,~~ Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect ~~retainage if provided for in the Contract Documents.~~other data as reasonably requested by Owner or Architect. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 9.3.1.1 As provided in ~~Section 7.3.9,~~ 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.

...

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9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 ~~Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.~~Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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

- **.1** ~~defective~~ Defective Work not remedied;
- **.2** ~~third~~ 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~~ Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** ~~reasonable~~ Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** ~~damage~~ Damage to the Owner or a Separate Contractor;

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.6 ~~reasonable~~ Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~

.7 ~~repeated~~ Repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents;

.8 Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;

.9 Evidence of financial inability to perform the Contract fully;

.10 Failure to submit record documents required by the Contract; or

.11 Failure of the Contractor to perform any other obligations of the Contract.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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

§ 9.6.2 The Contractor ~~shall pay each Subcontractor, no later than seven days after~~ shall, within ten (10) days following 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.~~pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

...

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

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days

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after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

...

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

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

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been

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accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under ~~Section 9.8.2.~~ 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.

...

§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly agreed upon in writing, 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.

...

§ 9.10.1 ~~Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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 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.~~ certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 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~~ The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other ~~indebtedness~~ liabilities 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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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~~ have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of

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Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to ~~indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~discharge any such lien or indemnify the Owner from liability.

§ 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, corrected, 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 the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it~~ The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of ~~Claims.~~any claims by the Owner.

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

~~**.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

~~**.2** failure of the Work to comply with the requirements of the Contract Documents;~~

~~**.3** terms of special warranties required by the Contract Documents; or~~

~~**.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~Intentionally deleted.

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§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

~~**§ 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.~~

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

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

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident

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occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

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

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

...

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

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

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER'S CONSULTANT'S, OR ARCHITECT'S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE,

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REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER'S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

...

~~**§ 10.2.8 Injury or Damage to Person or Property**~~

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, ~~to~~ cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the ~~fullest extent permitted by law,~~ extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in ~~Section 10.3.1~~ Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

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

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Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

...

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

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

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~Intentionally deleted.

...

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

§ 11.2.2 ~~Failure to Purchase Required Property Insurance.~~ ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~Intentionally deleted.

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§ 11.2.3 ~~Notice of Cancellation or Expiration of Owner's Required Property Insurance.~~ ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~Intentionally deleted.

...

§ 11.3.1 ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~Intentionally deleted.

~~§ 11.3.2~~ ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.3.2 Intentionally deleted.

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~Intentionally deleted.

...

§ 11.5.1 ~~A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~Intentionally deleted.

§ 11.5.2 ~~Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the~~

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~~proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~Intentionally deleted.

...

~~§ 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.~~

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

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

...

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

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

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion ~~thereof or after the date for commencement of warranties established under Section 9.9.1, or~~ thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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

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Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

...

12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

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

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

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

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

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

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The ~~Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

...

§ 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,~~ Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written

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consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the ~~Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements~~ Owner shall provide or contract for such additional testing, inspection, or ~~approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.~~ approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least ten (10) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

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

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

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees,~~ Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because ~~the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made~~ the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract ~~Documents; or~~Documents.

.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Intentionally deleted.

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in ~~Section 14.3,~~ 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.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in ~~Section 14.1.1~~ Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in ~~Section 14.1.3.~~Section 14.1.3.

...

.2 fails to make payment to Subcontractors ~~or suppliers~~ for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~Suppliers;

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.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

~~.4~~ .6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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.2 Accept assignment of subcontracts pursuant to ~~Section 5.4;~~ 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.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

...

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the ~~Work,~~ 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~~ may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1.~~ delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the ~~extent~~extent:

.1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted,~~ was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause.~~cause by giving Contractor seven (7) days notice.

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

...

.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.~~orders related to the Project.

§ 14.4.3 In case of ~~such~~ termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

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~~§ 15.1.2 Time Limits on Claims~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ the Contractor, 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.~~Claim. Claims must be initiated by written notice to the Architect and the Owner.

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

...

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

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the ~~Initial Decision Maker's~~ Owner's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15. ~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

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

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§ 15.1.6.2 ~~If adverse~~ The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a ~~Claim~~ claim for additional time, such Claim shall be documented by data substantiating ~~that weather conditions were abnormal for the period of time,~~ such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

~~**§ 15.1.7 Waiver of Claims for Consequential Damages**~~

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.1.7 Calculating Claims for Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- **.1** No indirect or consequential damages will be allowed.
- **.2** No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- **.3** Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- **.4** No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~ Architect with no recommendation having been rendered by the Architect.

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§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the Claim take one or more of the following actions: (1) request additional supporting data from the ~~claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 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.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

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

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~Intentionally deleted. .

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~**Waiver of Lien**

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

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§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

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§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

...

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

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§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. 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.

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

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

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the

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District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**ZAPALAC REED CONSTRUCTION COMPANY**
By:	**By:**
Signature	**Signature**
Steve Flores, Interim Superintendent	Shad Zapalac, President of ZRC Management, LLC General Partner of Zapalac/Reed Construction Co., LP
(Printed name and title)	*(Printed name and title)*
Date:	Date:

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a~~

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written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:07:02 ET on 05/14/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Attorney for Lake Travis ISD

(Title)

05/14/2025

(Dated)

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AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 21st day of May in the year 2025
(In words, indicate day, month, and year.)

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

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

and the Construction Manager:
(Name, legal status, address, and other information)

Zapalac/Reed Construction Co., LP
13215 Bee Cave Parkway
Bldg A, Suite #110
Bee Cave, TX 78738
512-306-8888 (telephone)

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

PHASE II - Lake Travis High Cavalier Drive

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

Malone Wheeler
5113 Southwest Parkway, Suite 260
Austin, TX 78735
512-899-0601 (telephone)

As used in this Agreement, the term "Architect" is to be construed to be the Engineer listed above.

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–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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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Request for Proposal for the Project; see also Exhibit A, GMP Amendment for Phase II

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The Project will be completed in two Phases – Phase I was completed in Summer 2024 and Phase II to be completed in Summer 2025.

The scope of this Agreement is for Phase II
Utilities work will include civil and electrical scope of work. For the electrical scope, this includes installation of underground primary raceways below Cavalier Drive and concrete transformer pads for use by the utility company,

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reinstalling secondary service to the Women's Field House, and installing secondary services to the New Gym and Stadium buildings. The civil scope includes erosion controls required to prevent sediment or other materials from leaving the work area and/or entering existing storm drains. Demolition will be required at pavement, curbs, and sidewalks for the installation of electrical infrastructure. Additional demolition of concrete stormwater culverts may be required if the contractor does not bore underneath the culverts for installation of electrical conduit at two separate culvert crossing locations. Lastly a restoration plan will take effect for areas disturbed like soil outside of pavement or sidewalks. These areas must be restored with permanent vegetation following construction.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

Approximate Construction Budget for both Phase I and II - $8,838,933

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

(Paragraph deleted)
Phase II
Construction Commencement Date: Upon Notice to Proceed from LTISD provided that all necessary permits have been obtained.

(Paragraphs deleted)
Substantial Completion Dates: Seventy-Nine (79) days from NTP

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

(Paragraph deleted)
§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Request for Proposal for the Project; see also Exhibit A, GMP Amendment for Phase II

§ 1.1.8 The Owner identifies the following representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

LTISD Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch or successor
Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Engineer / Architect

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§ 1.1.10 The Engineer will retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Structural Engineer:
Pickett, Kelm & Associates, Inc.
4100 Duval Road, Building 4, Suite 103
Austin, Texas 78759-3550512-345-5538

.2 Landscape
BluFish Collaborative
107 Leland St. #2
Austin, TX 78704
512-388-4115

.3 Architect
Pfluger Architects
209 E. Riverside Dr.
Austin, TX 78704
512-476-4040

§ 1.1.11 The Engineer's representative:
(List name, address, and other contact information

Jesse Malone
5113 Southwest Parkway, Suite 260
Austin, TX 78735
512-899-0601 (telephone)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Bryan Bailey
13215 Bee Cave Parkway, Suite A110
Bee Cave, Texas 78738
512-306-8888

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter F.

§ 1.1.15 Other Initial Information on which this Agreement is based:

See Request for Proposal for the Project; see also Exhibit A, GMP Amendment for Phase II

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Paul Norton, Superintendent, or successor.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 2.3 General Conditions

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§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

(Paragraphs deleted)
§ 2.3.2 Per Texas Government Code, §2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with the terms herein.

§ 2.3.3 For the Construction Phase, the general conditions of the contract shall be set forth in A201-2017, as amended by the parties, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 Intentionally Deleted

§ 3.1.3.5 Intentionally Deleted

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§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect 's services, other Owner consultants' services, and the Owner 's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 3.1.6.3 If the Architect is providing cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

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§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval, which may consist of a verification that all specified requirements will be met.

§ 3.1.11.2 To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: the Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.1.11.6 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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§ 3.1.11.7 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.1.11.8 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in this Agreement.

§ 3.1.11.9 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

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.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent at the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such

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costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any known inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes from which Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase, as provided in Section 8.1.2 of A201-2017.
(Paragraphs deleted)
§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration
§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection, subject to the provisions of the Public Information Act. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

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.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report
The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner
§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements. The Construction Manager shall be entitled to rely on such information for its accuracy and completeness.

(Paragraph deleted)

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§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

(Paragraph deleted)
§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.2.3 of AIA 201-2017.

§ 4.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:

Paul Norton, Superintendent, or successor, and Robert Winovitch, Director of Construction and Facilities, or successor.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Engineer/Architect. The terms of the agreement between the Owner and Engineer/Architect shall be available for inspection by the Construction Manager upon request.

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§ 4.4 Inspection and Testing
Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Paragraph deleted)
A lump sum of $21,667.00

§ 5.1.2
(Paragraphs deleted)
Intentionally deleted.
(Table deleted)
(Paragraphs deleted)
§ 5.1.2.1 Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable within 30 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 30 days after the invoice receipt from the Architect shall bear interest in accordance with Texas Government Code Section 2251.025.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee, the total of which shall not exceed the Guaranteed Maximum Price. All savings under the Guaranteed Maximum Price shall accrue to Owner.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

A percentage fee of _3.95___% of the Cost of Work.

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Only by agreement of Owner's Board of Trustees.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See A201-2017, Section 7.1.4

(Paragraphs deleted)

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§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. 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 the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

(Paragraph deleted)

§ 6.1.6 Other:

(*Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.*)

N/A

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment(s), subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Contraction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

(Paragraph deleted)

§ 6.3 Changes in the Work

(Paragraphs deleted)

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall

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issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

(Paragraph deleted)

§ 6.3.1.1 Intentionally deleted.

(Paragraphs deleted)

§ 6.3.2 Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended by the parties.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

(Paragraph deleted)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

(Paragraphs deleted)

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time attributable to and required for the Work and only as approved by Owner.

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Owner approves the total amount of $79,100, plus labor burden, for Contractor's supervisory and administrative personnel stationed at home office.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Such costs are hereinafter collectively referred to as "Labor Burden". Labor Burden is stipulated by the parties to be 42% of the total wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for craft personnel and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for administrative personnel.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Intentionally deleted.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 7.6 Miscellaneous Costs

(Paragraphs deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

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Commercial General Liability, Automobile Liability, Contractor's Professional Liability, Contractor's Pollution Liability, Miscellaneous liability and Excess Liability insurance policies shall be charged at 1.25% of the sum of (i) the Cost of the Work less such insurance and (ii) the Contractor's Fee. Builder's Risk insurance shall be charged at 0.40% of the sum of (i) the Cost of the Work and (ii) the Contractor's Fee. Payment and Performance Bonds, if required, will be charged as Cost of the Work at Contractor's cost.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid for by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Intentionally deleted.

(Paragraphs deleted)
§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges

§ 7.6.8 Deposits for lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.6.12 Data processing/software costs related to the work including but not limited 'Procore' expenses.

§ 7.6.13 Intentionally deleted.

§ 7.6.14 Costs for performing surveying, field engineering and layout services Contractor is required to perform.

§ 7.6.15 Costs for Storm Water Pollution Prevention Plan, devices and construction drainage control and water control.

§ 7.6.16 Costs for all temporary utilities.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, that are directly attributable to and required for the Work and are approved by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, as amended.

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§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Intentionally deleted;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for services incurred during the Preconstruction Phase;
- **.10** Delay damages or claims; and
- **.11** Construction Manager's Fee in Section 6.1.2

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

(Paragraph deleted)

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§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

(Paragraphs deleted)

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

> "By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

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§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents.

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Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 The application for payment shall be made in the AIA G702 and G703 format and I sbased on estimated percentage complete. Upon completion of the Work, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect, and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) classification on the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.5 The portion of the Guaranteed Maximum Price allocable to specially fabricated materials, furniture, fixtures and equipment, or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as required by the applicable subcontract or purchase order.

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§ 11.1.7.2 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 A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager 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 A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation;

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

.2 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 due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ 11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other 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 (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§ **11.1.7.4** In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

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Five (5%) percent

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.2 Final Payment

§ 11.2.1 Final payment, for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

- **.1** the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- **.3** a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable;

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.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

(Paragraphs deleted)

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Preconstruction Fee (as stated in § 5.1.1).

.4 Add Construction Manager's Fee for Construction Phase Services (as stated in § 6.1.1).

.5 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.6 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

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.7 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.8 Subtract all previous payments made by the Owner.

.9 In no event shall the total of subsections .1, .2, .3, and .4 above exceed the Guaranteed Maximum Price.

.10 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2 Intentionally deleted.

§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

Litigation in a court of competent jurisdiction

(Paragraphs deleted)

If the Owner and Construction Manager 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 with proper venue being the county where the Project site is located.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 .If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager 's compensation under this Section exceed the compensation set forth in Section 5.1.

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§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

(Paragraphs deleted)

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

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.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(*Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.*)

N/A

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price, if established, and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1

The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

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.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

(Paragraphs deleted)

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance.I In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

(Paragraph deleted)

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

(Paragraph deleted)

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

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

(Paragraph deleted)

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

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

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

(Paragraph deleted)

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

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§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

(Paragraph deleted)

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

(Paragraphs deleted)

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

§ 14.3.1.5.1.11 The Construction Manager shall post on each Project site a notice, in the text form and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

.1 A certificate of coverage, prior to the other person beginning work on the Project; and
.2 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 Owner in writing by certified mail or persona delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.7 Contractually require each person with whom it contracts to perform as required by items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

§ 14.3.1.5.1.13 By signing this Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based

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on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Owners and Contractors Protective Liability Insurance naming the Owner, Superintendent and Board of Trustees as additional insured with the following limits:

.1 $1,000,000 each occurrence;
.2 $1,000,000 aggregate as primary limits, irrespective of whether occurrence consists of bodily injury, death, property damage or combination thereof.

Covering the work to be performed for Owner by the Construction Manager and its subcontractor, if any. It will be necessary that the Construction Manager and the Subcontractor, if any, be designated in the Declarations of the policy. The definition of insured in the policy shall be endorsed to include officers, employees of the Owner, with respect to the work performed by the Construction Manager. Written with the same company as CGL policy. The Architects and Engineers shall be additional insured but only will have excess coverage. The full policy limits will protect the Owner if needed and only the excess will protect the Architects and Engineers.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named additional insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to $500,000 value. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $250,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

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§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

(Paragraphs deleted)
(Table deleted)
§ 14.5 Other provisions:
§ 14.5.1 Criminal History Checks
Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 14.5.6 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.7 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 have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

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§ 14.5.8 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."

§ 14.5.9 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under 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.

§ 14.5.10 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. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 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.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

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

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

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these

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standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 14.5.22 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

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.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended

.2 Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended

.5 Exhibit B – Prevailing Wage Rate

(Paragraphs deleted)

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**ZAPALAC REED CONSTRUCTION COMPANY**
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Steve Flores, Interim Superintendent *(Printed name and title)*	Shad Zapalac, President of ZRC Management, LLC General Partner of Zapalac/Reed Construction Co., LP *(Printed name and title)*

(Paragraphs deleted)

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Additions and Deletions Report for

AIA® Document A133® – 2019

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PAGE 1

AGREEMENT made as of the 21st day of May in the year 2025

...

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

Zapalac/Reed Construction Co., LP
13215 Bee Cave Parkway
Bldg A, Suite #110
Bee Cave, TX 78738
512-306-8888 (telephone)

...

PHASE II - Lake Travis High Cavalier Drive

...

The Engineer / Architect:

...

Malone Wheeler
5113 Southwest Parkway, Suite 260
Austin, TX 78735
512-899-0601 (telephone)

As used in this Agreement, the term "Architect" is to be construed to be the Engineer listed above.

PAGE 2

EXHIBIT B ~~INSURANCE AND BONDS~~**PREVAILING WAGE RATES**

...

See Request for Proposal for the Project; see also Exhibit A, GMP Amendment for Phase II

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...

The Project will be completed in two Phases – Phase I was completed in Summer 2024 and Phase II to be completed in Summer 2025.

The scope of this Agreement is for Phase II
Utilities work will include civil and electrical scope of work. For the electrical scope, this includes installation of underground primary raceways below Cavalier Drive and concrete transformer pads for use by the utility company, reinstalling secondary service to the Women's Field House, and installing secondary services to the New Gym and Stadium buildings. The civil scope includes erosion controls required to prevent sediment or other materials from leaving the work area and/or entering existing storm drains. Demolition will be required at pavement, curbs, and sidewalks for the installation of electrical infrastructure. Additional demolition of concrete stormwater culverts may be required if the contractor does not bore underneath the culverts for installation of electrical conduit at two separate culvert crossing locations. Lastly a restoration plan will take effect for areas disturbed like soil outside of pavement or sidewalks. These areas must be restored with permanent vegetation following construction.
PAGE 3

~~(Provide total and, if known, a line item breakdown.)~~
Approximate Construction Budget for both Phase I and II - $8,838,933

...

~~**.1** Design phase milestone dates, if any:~~

Phase II

~~**.2** Construction commencement date:~~Construction Commencement Date: Upon Notice to Proceed from LTISD provided that all necessary permits have been obtained.

~~**.3** Substantial Completion date or dates:~~

~~**.4** Other milestone dates:~~

Substantial Completion Dates: Seventy-Nine (79) days from NTP

...

N/A

...

N/A

~~**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

...

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See Request for Proposal for the Project; see also Exhibit A, GMP Amendment for Phase II

§ 1.1.8 The Owner identifies the following ~~representative~~ representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

LTISD Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch or successor
Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

...

Engineer / Architect

§ 1.1.10 The ~~Owner shall~~ Engineer will retain the following consultants and contractors:
PAGE 4

.1 ~~Geotechnical~~ Structural Engineer:
Pickett, Kelm & Associates, Inc.
4100 Duval Road, Building 4, Suite 103
Austin, Texas 78759-3550512-345-5538

~~.2 Civil Engineer:~~.2 Landscape
BluFish Collaborative
107 Leland St. #2
Austin, TX 78704
512-388-4115

.3 Architect
Pfluger Architects
~~.3 Other, if any:~~209 E. Riverside Dr.
~~(List any other consultants retained by the Owner, such as a Project or Program Manager.)~~Austin, TX 78704
512-476-4040

§ 1.1.11 The ~~Architect's~~ Engineer's representative:
(List name, address, and other contact ~~information.)~~information

Jesse Malone
5113 Southwest Parkway, Suite 260
Austin, TX 78735
512-899-0601 (telephone)

...

Bryan Bailey
13215 Bee Cave Parkway, Suite A110
Bee Cave, Texas 78738
512-306-8888

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...

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter F.

...

See Request for Proposal for the Project; see also Exhibit A, GMP Amendment for Phase II

PAGE 5

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price ~~Amendment~~ Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Paul Norton, Superintendent, or successor.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the ~~Owner~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an

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adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.
PAGE 6

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, ~~shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.~~ as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

~~**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.~~

~~**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**~~
~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

§ 2.3.2 Per Texas Government Code, §2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with the terms herein.

§ 2.3.3 For the Construction Phase, the general conditions of the contract shall be set forth in A201-2017, as amended by the parties, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity ~~discovered by~~ or made known to the Construction Manager as a request for information in such form as the Architect may require.

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...

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and ~~construction;~~ construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written~~ building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, ~~reliance, and exchange of digital data, including building information models for the Project.~~and exchange of digital data.

§ 3.1.3.4 Intentionally Deleted

§ 3.1.3.5 Intentionally Deleted

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When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the ~~Architect's~~ Architect 's services, other Owner consultants' services, and the ~~Owner's~~ Owner 's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective ~~action.~~action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not

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delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service,~~ services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

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§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and ~~approval.~~approval, which may consist of a verification that all specified requirements will be met.

§ 3.1.11.2 ~~The Construction Manager shall develop bidders' interest in the Project.~~To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

...

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: the Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.1.11.6 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

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.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.1.11.7 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.1.11.8 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in this Agreement.

§ 3.1.11.9 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

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Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this ~~document~~document.

...

the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's ~~Fee described in Section 6.1.2.~~Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.~~Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

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.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~

.5 ~~A date by which the Owner must accept the Guaranteed Maximum Price.~~The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

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§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent at the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 ~~If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager.~~ The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any known inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~any taxes from which Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

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§ 3.3.1.1 ~~For purposes of Section 8.1.2 of A201–2017, the~~ The date of commencement of the Work shall mean the date of commencement of the Construction ~~Phase.~~
Phase, as provided in Section 8.1.2 of A201-2017.

~~**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.~~

~~**§ 3.3.2 Administration**~~

~~**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.~~

~~**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.~~

~~**§ 3.3.2.3 Monthly Report**~~

~~The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.~~

~~**§ 3.3.2.4 Daily Logs**~~

~~The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.~~

~~**§ 3.3.2.5 Cost Control**~~

~~The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.~~

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration

§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an

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employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection, subject to the provisions of the Public Information Act. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

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§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems, sustainability and site requirements.~~systems sustainability and site requirements. The Construction Manager shall be entitled to rely on such information for its accuracy and completeness.

~~**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager 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. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these ~~costs.~~ costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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furnish the following information or services with reasonable promptness. ~~The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of~~ Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law ~~and~~ or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

~~**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as~~

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~~applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.2.3 of AIA 201-2017.

§ 4.1.4.3 ~~The Owner, when such services are requested,~~ Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner ~~shall~~ may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.

...

~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:

Paul Norton, Superintendent, or successor, and Robert Winovitch, Director of Construction and Facilities, or successor.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

...

The ~~Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The~~ Construction Manager's services shall be provided in conjunction with the services of an Engineer/Architect. The terms of the agreement between the Owner and Engineer/Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection and Testing

Owner shall provide the Construction Manager ~~with~~ a copy of the ~~scope of services in the executed~~ executed agreement between the Owner and the Architect, and any further modifications to ~~the Architect's scope of services in the agreement.~~the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

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~~*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*~~

A lump sum of $21,667.00

§ 5.1.2 ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~
~~*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*~~

Intentionally deleted.

~~**Individual or Position** **Rate**~~

~~**§ 5.1.2.1** Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.~~

~~**§ 5.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~

~~**§ 5.2 Payments**~~
~~**§ 5.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.~~

~~**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~% %~~

§ 5.1.2.1 Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments
§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable within 30 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 30 days after the invoice receipt from the Architect shall bear interest in accordance with Texas Government Code Section 2251.025.

...

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's ~~Fee.~~Fee, the total of which shall not exceed the Guaranteed Maximum Price. All savings under the Guaranteed Maximum Price shall accrue to Owner.

...

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A percentage fee of _3.95___% of the Cost of Work.

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

...

Only by agreement of Owner's Board of Trustees.

...

See A201-2017, Section 7.1.4

~~**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed ( ) percent (%) of the standard rental rate paid at the place of the Project.~~

~~**§ 6.1.6** Liquidated damages, if any:~~
~~*(Insert terms and conditions for liquidated damages, if any.)*~~

~~**§ 6.1.7** Other:~~
~~*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*~~

~~**§ 6.2 Guaranteed Maximum Price**~~
~~The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.~~

~~**§ 6.3 Changes in the Work**~~
~~**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

~~**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.~~

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. 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

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by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

~~**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.~~

§ 6.1.6 Other:

(*Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.*)

N/A

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment(s), subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Contraction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

~~**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

§ 6.3 Changes in the Work

~~**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.~~

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~~**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

~~**ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**~~

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

~~**§ 7.1 Costs to Be Reimbursed**~~

§ 6.3.1.1 Intentionally deleted.

~~**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.~~

~~**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.~~

§ 6.3.2 Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended by the parties.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

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~~§ 7.2 Labor Costs~~
§ 7.2 Labor Costs

~~§ 7.2.1~~ § 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior ~~approval, at off-site workshops.~~written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

~~§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.~~

~~§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~
~~*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*~~

~~§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

~~§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the
site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time attributable to and required for the Work and only as approved by Owner.

Owner approves the total amount of $79,100, plus labor burden, for Contractor's supervisory and administrative personnel stationed at home office.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories,
workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. Such costs are hereinafter collectively referred to as "Labor Burden". Labor Burden is stipulated by the parties to be 42% of the total wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for craft personnel and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 for administrative personnel.

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§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and~~ subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.
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§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the ~~Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the~~ Work.

...

§ 7.5.2 ~~Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.~~Intentionally deleted.

...

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

...

~~**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

~~**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

~~**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.~~

~~**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

~~**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

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§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

Commercial General Liability, Automobile Liability, Contractor's Professional Liability, Contractor's Pollution Liability, Miscellaneous liability and Excess Liability insurance policies shall be charged at 1.25% of the sum of (i) the Cost of the Work less such insurance and (ii) the Contractor's Fee. Builder's Risk insurance shall be charged at 0.40% of the sum of (i) the Cost of the Work and (ii) the Contractor's Fee. Payment and Performance Bonds, if required, will be charged as Cost of the Work at Contractor's cost.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid for by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

~~**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Intentionally deleted.

~~**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.~~

~~**§ 7.6.7** Costs of document reproductions and delivery charges.~~

~~**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

~~**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

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§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located
at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges

§ 7.6.8 Deposits for lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.6.12 Data processing/software costs related to the work including but not limited 'Procore' expenses.

§ 7.6.13 Intentionally deleted.

§ 7.6.14 Costs for performing surveying, field engineering and layout services Contractor is required to perform.

§ 7.6.15 Costs for Storm Water Pollution Prevention Plan, devices and construction drainage control and water control.

§ 7.6.16 Costs for all temporary utilities.

§ 7.7.1 Other costs incurred in the performance of the Work, ~~with the Owner's prior approval.~~that are directly attributable to and required for the Work and are approved by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document ~~A201–2017.~~A201–2017, as amended.
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Manager to pay such costs, unless such costs are excluded by the provisions of Section ~~7.9.~~7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

...

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the ~~Owner~~ Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

...

.2 ~~Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~Intentionally deleted;

...

.6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and

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suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

...

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.9 Costs for services incurred during the Preconstruction ~~Phase.~~Phase;

.10 Delay damages or claims; and

.11 Construction Manager's Fee in Section 6.1.2

...

§ 8.1 ~~Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager.~~ Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

~~**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this ~~Agreement,~~ Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of ~~cost plus~~ cost-plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

~~**ARTICLE 10 ACCOUNTING RECORDS**~~

~~The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.~~

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

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.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

> "By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda,

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and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

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§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the __ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the __ day of the __ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than __ (__) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 ~~With each Application for Payment,~~ The application for payment shall be made in the AIA G702 and G703 format and I sbased on estimated percentage complete. Upon completion of the Work, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values~~ values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect may require. The schedule of values shall be~~ Architect, and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) ~~the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to~~

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~~the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in~~ classification on the schedule of values.

...

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

...

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.5 The portion of the Guaranteed Maximum Price allocable to specially fabricated materials, furniture, fixtures and equipment, or other orders requiring advance deposits or interim payment before completion and/or delivery, which advances shall be made as required by the applicable subcontract or purchase order.

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditors~~ auditors, accountants, or other representatives in such documentation; ~~and~~

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

- **.1** If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.
- **.2** 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 due Construction Manager at any time.
- **.3** If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.
- **.4** Subtract withheld payments pursuant to Section 11.1.3.

§ 11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other 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 (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

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.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§ **11.1.7.4** In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

...

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may 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.)~~due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent
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Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:

...

N/A

...

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the ~~Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to ~~Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

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§ 11.1.12 In ~~taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

...

§ 11.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum,~~ for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the ~~Contract, except for~~ Contract including the Construction Manager's responsibility to correct ~~Work as provided in Article 12 of AIA Document A201–2017,~~ Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; and~~Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect ~~in accordance with Section 11.2.2.2.~~and approved by the Program Manager, if applicable;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

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~~**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.~~

~~**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~

~~**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

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~~**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~**§ 11.3 Interest**~~

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~—%~~

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the
Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article
9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Preconstruction Fee (as stated in § 5.1.1).

.4 Add Construction Manager's Fee for Construction Phase Services (as stated in § 6.1.1).

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.5 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.6 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

.7 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.8 Subtract all previous payments made by the Owner.

.9 In no event shall the total of subsections .1, .2, .3, and .4 above exceed the Guaranteed Maximum Price.

.10 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or
in the absence thereof, at the maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

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§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute ~~resolution, and Section 12.1.2 of this Agreement shall not apply.~~resolution.

§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~Intentionally deleted.
~~(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~
§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

...

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

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~~*[–] Arbitration pursuant to Article 15 of AIA Document A201–2017*~~

~~[–]~~ Litigation in a court of competent jurisdiction

~~[–] Other: *(Specify)*~~

If the Owner and Construction Manager 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.~~jurisdiction with proper venue being the county where the Project site is located.

...

§ 13.1
~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 ~~If~~ If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction ~~Manager's~~ Manager 's compensation under this Section exceed the compensation set forth in ~~Section 5.1.~~Section 5.1.
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forth in ~~Section 5.1.~~Section 5.1.

...

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

...

~~§ 13.2.2 Termination by the Owner for Cause~~
~~§ 13.2.2.1~~ ~~If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:~~

~~**.1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~
~~**.2** Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.~~

§ 13.2.2 Termination by the Owner for Cause

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§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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N/A

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum ~~Price~~ Price, if established, and Contract Time ~~shall~~ may be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

...

§ 14.1 ~~Terms~~ Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

...

legal representatives to covenants, agreements, and obligations contained in the Contract Documents. ~~Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

~~**§ 14.2.2** The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.~~This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted.

§ 14.3 ~~Insurance and Bonds~~Insurance and Bonds

§ 14.3.1

The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to

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performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

~~**§ 14.3.1 Preconstruction Phase**~~

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance.I In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

~~**§ 14.3.1.1** Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.~~

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

~~**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation,

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independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

~~**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

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

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

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

~~**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ( ) each accident, ( ) each employee, and ( ) policy limit.~~

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

~~**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ( ) per claim and ( ) in the aggregate.~~

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

~~**§ 14.3.1.6 Other Insurance**~~
~~*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*~~
§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ 14.3.1.5.1.11 The Construction Manager shall post on each Project site a notice, in the text form and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

.1 A certificate of coverage, prior to the other person beginning work on the Project; and
.2 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 Owner in writing by certified mail or persona delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.7 Contractually require each person with whom it contracts to perform as required by items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Owners and Contractors Protective Liability Insurance naming the Owner, Superintendent and Board of Trustees as additional insured with the following limits:

.1 $1,000,000 each occurrence;
.2 $1,000,000 aggregate as primary limits, irrespective of whether occurrence consists of bodily injury, death, property damage or combination thereof.

Covering the work to be performed for Owner by the Construction Manager and its subcontractor, if any. It will be necessary that the Construction Manager and the Subcontractor, if any, be designated in the Declarations of the policy.

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The definition of insured in the policy shall be endorsed to include officers, employees of the Owner, with respect to the work performed by the Construction Manager. Written with the same company as CGL policy. The Architects and Engineers shall be additional insured but only will have excess coverage. The full policy limits will protect the Owner if needed and only the excess will protect the Architects and Engineers.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named additional insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to $500,000 value. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $250,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

~~**Coverage** **Limits**~~

~~**§ 14.3.1.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

~~**§ 14.3.2 Construction Phase**~~
~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

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~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~
~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

§ 14.5.1 Criminal History Checks

Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 14.5.6 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.7 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

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Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.8 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."

§ 14.5.9 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under 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.

§ 14.5.10 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. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 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.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

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

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

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§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.
§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 14.5.22 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

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.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

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§ 15.1 This ~~Agreement~~ Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This ~~Agreement~~ Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents ~~comprise the Agreement:~~are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended

.2 ~~AIA Document A133™–2019,~~ Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 ~~AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, as amended

.5 ~~Building Information Modeling Exhibit, if completed:~~Exhibit B – Prevailing Wage Rate

~~.6 Other Exhibits:~~
~~*(Check all boxes that apply.)*~~

~~[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~
~~(Insert the date of the E234-2019 incorporated into this Agreement.)~~This Agreement is entered into as of the day and year first written above.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **ZAPALAC REED CONSTRUCTION COMPANY**

~~[ ] Supplementary and other Conditions of the Contract:~~

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

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OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Steve Flores, Interim Superintendent *(Printed name and title)*	Shad Zapalac, President of ZRC Management, LLC General Partner of Zapalac/Reed Construction Co., LP *(Printed name and title)*

~~.7 Other documents, if any, listed below:~~

~~*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*~~

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

~~**OWNER** *(Signature)*~~	~~**CONSTRUCTION MANAGER** *(Signature)*~~
~~*(Printed name and title)*~~	~~*(Printed name and title)*~~

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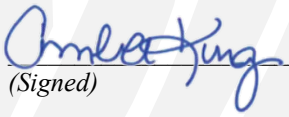
Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:06:29 ET on 05/14/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

05/14/2025

(Dated)

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AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the 21st day of May in the year 2025, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of May in the year 2025 (the "Agreement")
(In words, indicate day, month, and year.)

for the following **PROJECT:**
(Name and address or location)

PHASE II - Lake Travis High School Cavalier Drive

THE OWNER:
(Name, legal status, and address)

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Zapalac/Reed Construction Co., LP
13215 Bee Cave Parkway
Bldg A, Suite #110
Bee Cave, TX 78738
512-306-8888 (telephone)

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price for Phase II of the Project. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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

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

AIA Document A201™–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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§ A.1.1.1 The Contract Sum for Phase II of the Project is guaranteed by the Construction Manager not to exceed **ONE MILLION, NINE HUNDRED NINETY-SEVEN THOUSAND, TWO HUNDRED SEVENTY-NINE DOLLARS AND ZERO CENTS ($1,997,279.00)** subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price for Phase II organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

See Exhibit A-1

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates
§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price for Phase II:

(Table deleted)
See Exhibit A-1

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 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)

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ A.2.1 The date of commencement of the Phase II Work shall be:
(Check one of the following boxes.)

[ ] The date of execution of this Amendment.

[X] Established as follows – Upon NTP from LTISD provided that all necessary permits have been obtained.
(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 execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion
§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of Phase II Work:

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(Check one of the following boxes and complete the necessary information.)

[X] Not later than 79 (seventy-nine) calendar days from the date of commencement of the Work.

[ ] By the following date:

§ A.2.3.2 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 Phase II Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

(Table deleted)
N/A

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion of Phase II as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.5 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time for Phase II set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

(Table deleted)
§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See Exhibit A-2
(Table deleted)
§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See Exhibit A-2
(Table deleted)
§ A.3.1.4 The Sustainability Plan, if any:

N/A
(Table deleted)
Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price for Phase II:
(Identify each allowance.)

(Table deleted)
See Exhibit A-1

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price for Phase II is based:
(Identify each assumption and clarification.)

See Exhibit A-1

§ A.3.1.7 The Guaranteed Maximum Price for Phase II is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

See Exhibit A-1

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ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**ZAPALAC REED CONSTRUCTION COMPANY**
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Steve Flores, Interim Superintendent *(Printed name and title)*	Shad Zapalac, President of ZRC Management, LLC General Partner of Zapalac/Reed Construction Co., LP *(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A133® – 2019 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:06:10 ET on 05/14/2025.

PAGE 1

This Amendment dated the 21st day of May in the year ~~,~~ 2025, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 21st day of May in the year 2025 (the "Agreement")

...

PHASE II - Lake Travis High School Cavalier Drive

...

(Name, legal status, and address)

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

(Name, legal status, and address)

Zapalac/Reed Construction Co., LP
13215 Bee Cave Parkway
Bldg A, Suite #110
Bee Cave, TX 78738
512-306-8888 (telephone)

...

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum ~~Price.~~ Price for Phase II of the Project. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum for Phase II of the Project is guaranteed by the Construction Manager not to exceed ~~($ —),~~ **ONE MILLION, NINE HUNDRED NINETY-SEVEN THOUSAND, TWO HUNDRED SEVENTY-NINE DOLLARS AND ZERO CENTS ($1,997,279.00)** subject to additions and deductions by Change Order as provided in the Contract Documents.

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User Notes: (1635205935)

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price for Phase II organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
PAGE 2

See Exhibit A-1

...

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum ~~Price:~~Price for Phase II:

~~Item~~	~~Price~~

See Exhibit A-1

...

§ A.2.1 The date of commencement of the Phase II Work shall be:

...

[ ] ~~Established as follows:~~ [X] Established as follows – Upon NTP from LTISD provided that all necessary permits have been obtained.

...

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of ~~the entire~~ Phase II Work:
PAGE 3

[X] Not later than 79 (seventy-nine) calendar days from the date of commencement of the Work.

...

§ A.2.3.2 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~~ Phase II Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

~~Portion of Work~~	~~Substantial Completion Date~~

N/A

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion of Phase II as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section ~~6.1.6~~ 6.1.5 of the Agreement.

...

§ A.3.1 The Guaranteed Maximum Price and Contract Time for Phase II set forth in this Amendment are based on the Contract Documents and the following:

...

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

...

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See Exhibit A-2

~~Section~~	~~Title~~	~~Date~~	~~Pages~~

...

See Exhibit A-2

~~Number~~	~~Title~~	~~Date~~

...

~~(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)~~
N/A

~~Title~~	~~Date~~	~~Pages~~

...

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum ~~Price:~~Price for Phase II:

...

~~Item~~	~~Price~~

See Exhibit A-1

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price for Phase II is based:

...

See Exhibit A-1

§ A.3.1.7 The Guaranteed Maximum Price for Phase II is based upon the following other documents and information:

...

See Exhibit A-1

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **ZAPALAC REED CONSTRUCTION COMPANY**

...

Steve Flores, Interim Superintendent

Shad Zapalac, President of ZRC Management, LLC
General Partner of Zapalac/Reed Construction Co., LP

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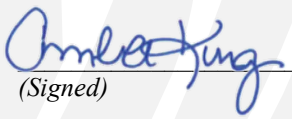
Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:06:10 ET on 05/14/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

05/14/2025

(Dated)

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Construction Agreements between Lake Travis ISD and Liberty Civil Construction for Reimer's Road Private Drive Project

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approve and execute the construction agreements between Lake Travis ISD and Liberty Civil Construction for Reimer's Road private drive project.

RATIONALE
In March 2024, the District awarded the competitive sealed proposal for general contractor for the Reimer's Road Private Drive Project. The parties have since negotiated A101 and A201 construction contracts for the project. The administration is seeking approval to execute the agreements with Liberty Civil Construction.

BUDGET PROVISIONS
2023 Bond Program - $11,881,138.30

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
Liberty Civil Construction A101-2017
Liberty Civil Construction A201-2017

MEETING DATE
May 21, 2025

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 21st day of May in the year 2025
(In words, indicate day, month and year.)

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

Lake Travis Independent School District
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000

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

Liberty Civil Construction
2937 Hero Way
Leander, TX 78641

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

Phase 1 – Private Drive & Reimers-Peacock Public Road
The Architect:
(Name, legal status, address and other information)

Malone Wheeler
5113 Southwest Parkway #260
Austin, TX 78735
512-899-0601

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®–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.

Init.
/
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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

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B PROJECT MANUAL WITH SPECIFICATIONS AND DRAWINGS
EXHIBIT C CONTRACTOR PROPOSAL
EXHIBIT D PREVAILING WAGE RATES

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, Contractor's Proposal, 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.

[X] Established as follows: June 2, 2025; provided however, that Owner has obtained all necessary permits required for the Work. If the permits are not in place on that date, then the start date will be the date that all permits are received by the Construction Manager.

(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 achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information .)

[**X**] Not later than 352 calendar days from the date of commencement of the Work.

[ ] By the following date:

[ ] A date set forth in a notice to proceed issued by the Owner.

§ 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

§ 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 ELEVEN MILLION EIGHT HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED THIRTY-EIGHT DOLLARS AND 30/100 CENTS ($11,881,138.30) subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price

§ 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 Contingency	$500,000

§ 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.)

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.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Contractor's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amount stated below is the minimum value of the costs and actual and direct damages caused by failure of Contractor to substantially and finally complete the work within the allotted times, that such sum is liquidated direct damages and shall not be construed as a penalty, and that such sum may be deducted from payments due Contractor if such delay occurs. 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 the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Contractor a sum equal to $1000.00 per day for each and every additional calendar day beyond the agreed date of Substantial Completion that the project has not achieved such Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500.00 per day. Owner may deduct from the Final Payment made to Contractor, or, if sufficient funds are not available, then Contractor shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Contractor. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

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

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 last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the following

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month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

(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 among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values 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 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and 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;

.2 If approved in advance by the Owner, 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 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.

§ 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 A201–2017;

.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 A201–2017; 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 may 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%)

§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded, if any.

§ 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.)

Any limits required by Tex. Gov't Code, Chapter 2252, Subchapter B.

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§ 5.1.7.3
(Paragraphs deleted)
Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10 of AIA Document A201-2017. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 5.1.8 Intentionally deleted.

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

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
.2 Contractor has submitted Consent of Surety to Final Payment; and
.3 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 31 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest
(Paragraphs deleted)
Delinquent payments are subject to the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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 A201–2017, 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 not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, 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

[X] 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 A201–2017.

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§ 7.1.1 Intentionally deleted.
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

§ 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 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)

Robert Winovitch
Director of Facilities
512-533-5963
winovitchr@ltisdschools.org

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

Michael Ehrhardt
Managing Partner/President
512-233-9152
mike@libertycivil.com

§ 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 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

See Section 1.7 of the AIA A201, General Conditions of the Contract

§ 8.7 Other provisions:

8.7.1 The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. All parties understand that only the Board of Trustees for the Owner, acting as a body corporate, has the express authority to bind the Owner with respect to Change Orders or Contract amendments as provided herein, except as may otherwise be delegated by the Board of Trustees.

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8.7.2 Pursuant to Texas Government Code Chapter 2270, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

8.7.3 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.

8.7.4 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

8.7.5 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

8.7.6 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

.4 Drawings

Number	Title	Date
See Exhibit B, Drawings and Specifications		

.5 Specifications

Section	Title	Date	Pages
See Exhibit B, Drawings and Specifications			

.6 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.

.7 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

Exhibit C, Contractor Proposal

(Paragraphs deleted)

Exhibit D, Prevailing Wage Rates

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(Table deleted)

*(Paragraphs deleted)***.8** Other documents, if any, listed below:

Any other documents listed in Article 1.

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**LIBERTY CIVIL CONSTRUCTION, LLC**
OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
Steve Flores, Interim Superintendent *(Printed name and title)*	Michael Ehrhardt, Managing Partner/President *(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A101® – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:28:54 ET on 05/13/2025.

PAGE 1

AGREEMENT made as of the 21st day of May in the year 2025

...

Lake Travis Independent School District
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000

...

Liberty Civil Construction
2937 Hero Way
Leander, TX 78641

...

Phase 1 – Private Drive & Reimers-Peacock Public Road

...

Malone Wheeler
5113 Southwest Parkway #260
Austin, TX 78735
512-899-0601

PAGE 2

EXHIBIT A INSURANCE AND BONDS
EXHIBIT B PROJECT MANUAL WITH SPECIFICATIONS AND DRAWINGS
EXHIBIT C CONTRACTOR PROPOSAL
EXHIBIT D PREVAILING WAGE RATES

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, Contractor's Proposal, 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.

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...

[X] Established as follows: June 2, 2025; provided however, that Owner has obtained all necessary permits required for the Work. If the permits are not in place on that date, then the start date will be the date that all permits are received by the Construction Manager.

PAGE 3

(Check one of the following boxes and complete the necessary ~~information.)~~information .)

[X] Not later than ~~( )~~ 352 calendar days from the date of commencement of the Work.

[ ] By the following date:

[ ] A date set forth in a notice to proceed issued by the Owner.

...

§ 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 ~~($),~~ ELEVEN MILLION EIGHT HUNDRED EIGHTY-ONE THOUSAND ONE HUNDRED THIRTY-EIGHT DOLLARS AND 30/100 CENTS ($11,881,138.30) subject to additions and deductions as provided in the Contract Documents.

...

Owner Contingency	$500,000

PAGE 4

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Contractor's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amount stated below is the minimum value of the costs and actual and direct damages caused by failure of Contractor to substantially and finally complete the work within the allotted times, that such sum is liquidated direct damages and shall not be construed as a penalty, and that such sum may be deducted from payments due Contractor if such delay occurs. 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 the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Contractor a sum equal to $1000.00 per day for each and every additional calendar day beyond the agreed date of Substantial Completion that the project has not achieved such Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Final

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Completion is delayed beyond the date set for Final Completion shall be the sum of $500.00 per day. Owner may deduct from the Final Payment made to Contractor, or, if sufficient funds are not available, then Contractor shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Contractor. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

PAGE 5

.2 ~~That~~ If approved in advance by the Owner, 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,~~ or suitably stored off the site at a location agreed upon in writing; and

...

five percent (5%)

...

Items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded, if any.

...

Any limits required by Tex. Gov't Code, Chapter 2252, Subchapter B.

§ 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 is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10 of AIA Document A201-2017. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 5.1.8 ~~If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Intentionally deleted.

PAGE 6

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 Contractor has submitted Consent of Surety to Final Payment; and

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~~.2~~ .3 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~ 31 days after the issuance of the Architect's final Certificate for Payment, or as follows:

...

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~ % ~~ Delinquent payments are subject to the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

...

For any Claim ~~subject to, but~~ not resolved ~~by,~~ by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

...

[X] Litigation in a court of competent jurisdiction

PAGE 7

§ 7.1.1 ~~If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:~~ Intentionally deleted.

...

Robert Winovitch
Director of Facilities
512-533-5963

...

Michael Ehrhardt
Managing Partner/President
512-233-9152

...

§ 8.5.1 The ~~Owner and the~~ Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

...

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with ~~a building information modeling exhibit,~~ AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with ~~a building information modeling exhibit,~~ AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

See Section 1.7 of the AIA A201, General Conditions of the Contract

...

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8.7.1 The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. All parties understand that only the Board of Trustees for the Owner, acting as a body corporate, has the express authority to bind the Owner with respect to Change Orders or Contract amendments as provided herein, except as may otherwise be delegated by the Board of Trustees.

8.7.2 Pursuant to Texas Government Code Chapter 2270, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

8.7.3 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.

8.7.4 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

8.7.5 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

8.7.6 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

PAGE 8

~~**.4** Building information modeling exhibit, dated as indicated below:~~
~~(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~

~~**.5** Drawings~~
.4 Drawings

...

See Exhibit B, Drawings and Specifications

~~**.6**~~ **.5** Specifications

...

See Exhibit B, Drawings and Specifications

~~**.7**~~ **.6** Addenda, if any:

...

...

~~**.8**~~ **.7** Other Exhibits:

...

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[–] ~~AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:~~Exhibit C, Contractor Proposal

~~*(Insert the date of the E204-2017 incorporated into this Agreement.)*~~

Exhibit D, Prevailing Wage Rates

[–] ~~The Sustainability Plan:~~

~~Title~~	~~Date~~	~~Pages~~

[–] ~~Supplementary and other Conditions of the Contract:~~

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

~~.9~~ .8 Other documents, if any, listed below:

~~(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)~~

Any other documents listed in Article 1.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **LIBERTY CIVIL CONSTRUCTION, LLC**

...

Steve Flores, Interim Superintendent

Michael Ehrhardt, Managing Partner/President

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AIA® Document D401™ – 2003

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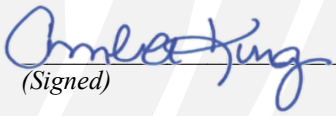

(Signed)

Attorney for Lake Travis ISD

(Title)

05/13/2025

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Phase 1 – Private Drive & Reimers-Peacock Public Road

THE OWNER:
(Name, legal status and address)

Lake Travis Independent School District
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000

THE ARCHITECT:
(Name, legal status and address)

Malone Wheeler
5113 Southwest Parkway #260
Austin, TX 78735
512-899-0601

THE CONTRACTOR:

Liberty Civil Construction
2937 Hero Way
Leander, TX 78641

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents shall consist of the Standard Form of Agreement between the Owner and Contractor (AIA Document AIA A101-2017) as modified by the parties for the Project including all Addenda and Exhibits thereto ("Agreement" or "Contract"); the General Conditions (AIA A201-2017 General Conditions of the Contract for Construction), as modified by the parties for the Project ("General Conditions"); any Supplementary Conditions; prepared by The Architect; all amendments to the Agreement; all amendments to the General Conditions; the Contractor's proposal, and written addenda to the proposal; the Construction Documents approved by Owner; the Contractor's bonds and proof of insurance; the Drawings, Specifications; Addenda issued prior to the execution of the Contract; other documents identified as Contract Documents in the Contract; 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.

§ 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 Construction Documents become part of the Contract when accepted by the Owner. All sections of the Project Manual shall be a part of the Contract, including any Proposal signed by the Contractor, and any Request for Proposals for the Project ("RFP"). The Contract may be amended or modified only by a written Modification signed by the Owner, The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

(Paragraphs deleted)

§ 1.1.7 CONSTRUCTION DOCUMENTS

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

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1.1.9 All references to "Contractor" shall include "Construction Manager at Risk" or "Construction Manager," where applicable.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 Performance by the Contractor shall be required only to the extent consistent with the Contract Documents.

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

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

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

§ 1.2.4 Conflicts or discrepancies among the Contract Documents shall be resolved in the following order of priority: (1) the Agreement (including any attachments), as may be modified or amended; (2) these General Conditions; (3) any Supplementary Conditions; (4) Drawings and Specifications; (5) other documents forming the Contract Documents and Modifications issued after the execution of the Contract. Except as otherwise specified herein, amendments, revisions, and Modifications of later date take precedence over those of earlier date. Drawings govern Specifications for quantity and location, and Specifications govern Drawings for quality and performance requirements. If there is a discrepancy in the quantity or quality stated, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality.

§ 1.2.5 STANDARDS AND REQUIREMENTS

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

1.2.5.1 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of Contractor's Proposal. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.6 OPTIONAL MATERIALS AND PROCESSES

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

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selection of color and pattern will be made by the Owner from the range available within the options selected by the Contractor, unless the item is specified to match a specific color or sample furnished.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 Intentionally deleted.

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

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

The parties shall endeavor to agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may upon written agreement use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraphs deleted)

§ 1.8 The Drawings, Specifications, and other Documents, including those in electronic form, prepared by the Owner, Contractor, Architect, design consultants or professionals, other consultants, (but not including documents relating to their respective businesses in general), are Owner's Property ("Construction Documents ") through which the work to be executed by the Contractor is described. The Contractor may retain one record set of the Construction Documents. Neither the Contractor nor the Architect, nor any design consultant or professional, other consultant, Subcontractor, Sub-subcontractor, nor material or equipment supplier shall own or claim a copyright in the Construction Documents, and unless otherwise indicated, the Owner will own them and have all common law, statutory, and other reserved rights, in addition to the copyright, upon creation of the Construction Documents. To this end and to the extent that Contractor has any ownership interest in the Construction Documents, Contractor agrees and does hereby assign, grant, transfer, and convey to Owner, its successors and assigns, Contractor's entire right, title, interest and ownership in and to such Construction Documents, including, without limitation, the right to secure copyright registration. Contractor confirms that Owner and its successors and assigns shall own Contractor's right, title, interest in and to,

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including the right to use, reproduce, distribute by sale, rental, lease, or lending, or by other transfer of ownership, to perform publicly, and to display, all such Construction Documents, whether or not such Construction Documents constitutes a "Work Made for Hire" as defined in 17 U.S.C. § 201(b). To the extent necessary to effectuate the obligations and covenants of this Section, Contractor shall obtain similar assignments from Contractor's consultants, subcontractors, sub-subcontractors, materialmen, and suppliers; provided, however that Contractor shall not be required to obtain assignment of preexisting intellectual property rights of any consultant, Subcontractor, Sub-subcontractor, materialmen, or supplier. Contractor shall provide evidence of any such preexisting intellectual property rights so claimed. If any consultant, Subcontractor, Sub-subcontractor, materialmen, or supplier refuses to grant Owner the assignment, Contractor shall immediately inform the Owner. The Construction Documents and copies thereof furnished to the Contractor are for use solely with respect to this Project.

§ 1.9 Building Information Models Use and Reliance
Intentionally deleted.

ARTICLE 2 OWNER
§ 2.1 General
§ 2.1.1 The Owner is the Board of Trustees of Lake Travis ISD, and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1 the Architect does not have the authority to bind the Owner. The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of any such consultant.

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

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

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

§ 2.2.2 Intentionally deleted.

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

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

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

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

§ 2.3.4 Intentionally deleted.

§ 2.3.5 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.

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

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor defaults or fails to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of a written notice from Owner to commence and continue correction of such default or neglect, the Owner may after the ten (10) day period order the Contactor to stop work until such deficiencies have been corrected, subject to the other terms of this Agreement.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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

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 as provided in this Contract.

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

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, 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 The Owner and Contractor agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any discernable errors or, inconsistencies in the Contract Documents which would delay the Contractor in the performance of the Contract Work.

§ 3.2.2 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall exercise reasonable care to (1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, (2) take field measurements of any existing conditions related to that portion of the Work and (3) observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. In beginning each portion of the Work, the Contractor represents that it has exercised reasonable care to visit and examine the Site and its surroundings and evaluate the visible condition of the Site and the Work. The circumstances evaluated by Contractor are the location and nature of the Work; and the form and nature of the Site. The Contractor further represents that it has exercised reasonable care to familiarize itself with the local conditions under which the Work is to performed, the location and character of existing or adjacent work or structures, the Contract Documents, the extent and nature of the Work and materials necessary for carrying out and completing the Work, the general character and accessibility of the Site, the applicable laws (including labor laws), and the accommodations the Contractor may require. Contractor further represents that it has correlated its visible observations with the requirements of the Contract Documents; and subject to the right to rely upon specific information as may be set forth herein, has assumed the risk of such visible conditions. The Contractor shall not, except as expressly provided in the Contract Documents, be entitled to any extensions of the Contract Time or to any adjustment of the Contract Sum on grounds of misinterpretation or misunderstanding of any such matter that could not have been discovered through the exercise of reasonable care, nor shall it, except as provided in the Contract Documents, be released from any of the risks accepted or obligations undertaken by it under the Contract Documents. Furthermore, in the event that Contractor relies upon such information, the Contractor may not rely upon such information when it knows or reasonably should have known that the information is inaccurate, inadequate, incomplete, or otherwise unfit for its intended purpose, or would infringe the intellectual property rights of third parties. Notwithstanding the foregoing, the Contractor shall not be responsible for evaluating the geotechnical conditions at the site, nor ensuring that the design documents are consistent with or compliant with the recommendations of any geotechnical engineer. Moreover, the parties recognize and agree the Contractor is not a design professional. All site investigations are limited to what is discernible upon reasonable visual inspection. Contractor is not required or responsible for identifying errors, omissions, discrepancies or defects in the Contract Documents that are the responsibility of the Architect and its consultants.

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

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor its warranty, it shall promptly notify the Owner in writing, providing substantiation for its position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect or Owner in response to the Contractor's notices or requests for information pursuant to Section 3.2.2, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Section 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor meets these obligations, the Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or

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omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures; however Contractor is not required to proceed until a mutually agreeable alternative is determined.

§ 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. Provided, however, under no circumstances shall Contractor be responsible or liable to Owner for work performed by others that is defective or in improper condition and not actually discovered by Contractor through the exercise of commercially reasonable diligence.

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

§ 3.3.5 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*

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

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§ 3.3.7 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on schedule. Contractor shall be entitled to compensation from the Construction Contingency , or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that the Substantial Completion or Final Completion cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within five (5) business days after the date of receipt of any request by Owner for resequencing or acceleration , a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet Substantial Completion or Final Completion.

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

§ 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 approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.4.2.2 The Contractor must submit to the Owner (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the time of completion of the Work and the construction schedule; and (iv) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings; and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Owner. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to allow the Owner no less than seven (7) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Furthermore, upon Owner's instruction, Contractor may not use any employee, subcontractor, supplier or vendor in the performance of the Work to whom the Owner makes a reasonable objection.

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

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§ 3.5 Warranty

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

§ 3.5.2 Contractor shall certify and warrant that the Project has been constructed in compliance with the Contract Documents.

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

§ 3.5.4 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction or replacement of the defective items, when notified by the Owner. Except as otherwise provided by law or where a longer period is specified or where a longer period is included in a manufacturer's warranty, the warranty period for workmanship of the Contractor, consultants, subcontractors and sub-subcontractors shall be one (1) year from the Date of Substantial Completion.

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

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

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

§ 3.5.8 The warranties of Contractor provided in Section 3.5.1 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall issue in the Owner's name all manufacturers' warranties for all equipment furnished by Contractor under this Contract and Contractor shall take no action or fail to act in any way that result in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and

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manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.6 Taxes

§ 3.6.1 The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sales, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall issue Certificates of Exemption to its Subcontractors and suppliers in lieu of said taxes for all such materials and supplies and shall obtain Certificates of Resale from Contractor suppliers. Failure of Contractor to issue Certificates of Exemption or to obtain Certificates of Resale from Contractor suppliers shall make the Contractor responsible for absorbing the tax, without compensation from Owner.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days 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, an equitable adjustment shall be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. 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

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Owner at once when the Owner's participation is required. Connections for temporary utilities required for the Work are the responsibility of the Contactor. Unless otherwise provided in the Contract Documents, payment for temporary services, tap charges, and water meter charges shall be the responsibility of the Contractor. Payment for permanent utility services shall be the responsibility of the Owner. The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities, as well as the National Pollutant Discharge Elimination System (NPDES). All of the foregoing expenses paid by the Contractor shall be considered Costs of the Work.

§ 3.8 Allowances

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

§ 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.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Such superintendent shall remain full-time on the Project until all items of the punch list are completed and accepted by the Owner. Prior to execution of the Contract, the Contractor shall furnish a list to the Owner of all consultants, job-site superintendent(s), Subcontractors, and suppliers involved in the Project. Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by Owner who shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed (1) to preclude the promotion within Contractor's organization of any person assigned to Work, or (2) to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner reasonably determines that any employee of Contractor or of its Subcontractors is careless, not qualified to perform the Work assigned to him, incompetent, insubordinate, or acts in violation of any provision of these Contract Documents, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employees, the Contractor shall promptly remove such employee from the Work and replace such employee. All times while activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests, and decisions of Owner. All of Contractor's and Subcontractor's personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions in any material respect.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may

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notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, provided that this provision shall not impact any requirement otherwise agreed to between the Owner and the Architect regarding progress meetings, or at such other time and frequency as are acceptable to or requested by the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Owner with each monthly application for payment a copy of the progress schedule showing all Modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein.

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

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

If not accepted by the Owner, the Contractor promptly shall revise the construction schedule in accordance with the reasonable recommendations of the Owner and re-submit the construction schedule for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and promptly shall advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these General Conditions as progress reports) as set forth in Section 3.10.1 or if requested by the Owner. In the event any progress report indicates any Contractor caused delays

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and Contractor is responsible for such delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.6 The Owner shall have the reasonable right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's reasonable request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. In the event the rescheduling of the Work results in delays or additional costs incurred by the Contractor for which it could not have reasonably foreseen, or as required by the Contract Documents; the Contractor will be compensated accordingly for both.

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the 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.

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect

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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 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.

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

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

§ 3.12.11 Adequate copies of shop drawings for architectural, structural, mechanical, and electrical work shall be submitted to the Architect or Owner for review. The Contractor shall submit complete drawings, data, and samples to the Architect or Owner at least ten (10) days prior to the date the Contractor needs the reviewed submittals and samples returned. Once samples of all key items are received, the Architect or Owner will finalize color selections. There may be occasions where review and responses in less than the 10 days are warranted. For these instances the Contractor shall notify the Owner and Architect of this need and they shall put all efforts forward to meet the Contractor's deadline.

§ 3.12.12 The Contractor shall submit electronic files of product data and two (2) samples to the Architect or Owner. One additional set may be requested for the Owner's representative. Where shop drawings are involved, the Contractor shall submit electronic files of the shop drawing for the Owner. After final review and correction of the submittal, if necessary, the Contractor shall send one corrected set to the Owner.

§ 3.13 Use of Site

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

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conduct, including smoking, access to the Project Site, parking of vehicles, tree preservation, and entry to any adjacent facilities that are owned by the Owner.

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

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

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

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

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

§ 3.14 Cutting and Patching

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

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

3.14.3 No cutting of structural elements that are not identified on the Contract Documents unless required to complete the Work will be permitted unless specifically approved in writing by Owner.

§ 3.15 Cleaning Up

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

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

§ 3.15.3 Prior to the Owner's inspection for Substantial Completion, the Contractor shall repair or replace damaged Work; clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint, and foreign substances from all surfaces; including glass and painted surfaces; polish transparent and glossy surfaces;

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clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean Site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the Site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

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

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

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND, RELEASE AND HOLD HARMLESS OWNER, AND ITS REGENTS, BOARD MEMBERS, OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, SUCCESSORS AND ASSIGNEES (COLLECTIVELY, "THE INDEMNIFIED PARTIES") OF, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT, WRONGFUL, OR TORTIOUS ACT OR OMISSION OF THE CONTRACTOR, CONTRACTOR'S SUBCONTRACTORS, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE THAT THEY CONTROL (COLLECTIVELY, "THE LIABILITIES"), REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES. IN THE EVENT OF FAILURE BY THE CONTRACTOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION SECTION, EACH OF THE INDEMNIFIED PARTIES, AT ITS OPTION, AND WITHOUT RELIEVING CONTRACTOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM, BUT ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN

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THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES, OR ANY OF THEM SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE, PROVIDED, HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

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

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

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

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

3.18.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

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

§ 3.19 RESPONSIBLE RECORD DRAWINGS

§ 3.19.1 At Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

§ 3.20 PREVAILING WAGE RATES

§ 3.20.1 No person employed by the Contractor or any of the Contractor's consultants or Subcontractors may be paid less than the minimum wage rate, as provided in Texas Government Code Chapter 2258.

§ 3.21 ANTITRUST VIOLATION

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

§ 3.22 REPRESENTATIONS AND WARRANTIES

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

.1 It is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 It is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 It is authorized to do business and in good standing in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it, over the Work, and over the Site of the Project;

.4 The execution of the Contract and its performance thereof is within its duly authorized powers;

.5 By submission of a proposal, it has reviewed the plans, specifications, and the Site, and that from its own visual investigations, has satisfied itself as to the nature and location of the Work, the character, quality, and quantity of surface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance; and

.6 It acknowledges and understands that the Owner will make no allowance on behalf of the Contractor for any error or negligence on the part of the Contractor for not having visited the Site or not having thoroughly familiarized itself with all of the documents before submitting a proposal.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

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

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§ 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the 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, 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 take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of

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a specific item shall not indicate approval of an assembly of which the item is a component. The fact that the Architect may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

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

§ 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and 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.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of

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receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The selection of subcontractors shall be in accordance with Section 2269.256 of the Texas Government Code.

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

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

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

§ 5.3 Subcontractual Relations

(Paragraph deleted)

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

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

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

§ 5.4 Intentionally deleted.

(Paragraphs deleted)

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§ 5.5 RESPONSIBILITY

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform other construction work, maintenance, and repair work, and school program operations at the Site and near the Site during the time period of the Work as long as such work is bid in compliance with Chapter 2269 subchapter F of the Texas Government Code. Owner may perform other work with separate contractors or forces at Owner's sole discretion. Owner shall have access to the building on the Site at all times. If the Contractor claims that delay or additional cost is involved because such action by the Owner as set forth in this Section 6.1.1, the Contractor may 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 any Separate Contractors and the Owner in reviewing their construction schedules. Upon written approval by Owner and Architect, the Contractor shall make any reasonable revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Intentionally deleted.

§ 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 notify the Architect of discovered discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor except to the extent such defects are actually discovered by Contractor in the exercise of reasonable care and not reported to the Architect as set forth in this section.

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

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

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

§ 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.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

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

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

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

§ 7.2 Change Orders

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

- **.1** The change in the Work;
- **.2** The change is necessary;
- **.3** The amount of the adjustment, if any, to the Contract Sum and prices submitted by the Contractor; and
- **.4** The extent of adjustment, if any, to the Contract Time.

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

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

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Contractor shall proceed with a change in the Work pursuant to a Construction Change Directive and Contractor shall concurrently proceed with submission of a Change Order Request.

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

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

§ 7.2.6 Nothing contained herein shall limit the right of Owner to order changes in Work by Change Orders that have not been signed by Contractor, and Contractor shall promptly perform all Work required under the Contract Documents or a Change Order despite its failure to execute the Change Order. However, the Owner shall issue and execute a Change Order authorizing payment for all undisputed amounts.

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

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

§ 7.3 Construction Change Directives

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

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

§ 7.3.3

(Paragraphs deleted)

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

§ 7.3.4

(Paragraphs deleted)

Intentionally deleted.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved 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.

§ 7.3.7 Intentionally deleted.

§ 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 documentation submitted by the Contractor to substantiate the decrease and is confirmed by the Architect and approved by the Owner. 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 and approved by the Owner.

§ 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.

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

.1 Reasonable cost of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
.2 Materials, supplies and equipment including cost of transportation, whether incorporated or consumed;
.3 Rental cost of machinery and equipment, exclusive of hand tools, at rates that are no greater than market rates in the locale of the Work at the time of the Work;
.4 Premiums for all bonds and insurance permit fees and sales, use or similar taxes related to the Work;
.5 Cost of Subcontractor for performing the change in the Work. The amount allowable for Subcontractors shall be calculated using the same standards set out herein for direct Work by the Contractor; and
.6 Additional costs of supervision and field office personnel directly attributable to and necessarily required for such charges.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

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§ 7.5 Allowance balances may be used to fund changes in the work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances. Provided the allowance was required per the Contract Documents or Owner to be included in Contract Sum, or was added to the Contract Sum by Change Order without overhead, profit or fee mark-up.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

§ 8.2.1 Time 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 The occurrence of an event which interferes with the ability of a Party to perform its obligations or duties hereunder which is not a) within the reasonable control of the Party affected and b) could not with the exercise of commercially reasonable diligence have been avoided or mitigated ("Force Majeure Event") including but not limited to acts of government, tariffs, acts of God, war, rebellion, strikes or lockouts, epidemics or health crisis (whether arising from existing or unknown pathogens/contagions), landslides, lightning, earthquakes, fires, named tropical storms (including, but not limited to hurricanes or hurricane warnings), crevasses, floods, washouts, or inability to secure any required consents, approvals, or permits for the Work, shall entitle the affected Party to suspension of its performance under this Contract to the extent prevented by the Force Majeure Event and for so long as the Force Majeure Event continues, plus any reasonable time necessary to recover from the Force Majeure Event and resume the Work. The affected Party shall make commercially reasonable efforts to resume performance and shall give written notice to the other Party as soon as reasonably practical during or after the occurrence of such Force Majeure Event. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall recommence as soon as commercially and reasonably practical. The Party affected by the Force Majeure Event shall not be liable to the other Party for any delay or other damages, costs, or expenses arising out of or relating to the suspension or termination of any of its obligations or duties under this Contract by reason of the occurrence of the Force Majeure Event, provided such Party complies in all material respects with its obligations under this Section.

(Paragraph deleted)

§ 8.3.2 In the event Contractor is delayed due to acts, omissions or other fault of the Owner or those under the Owner's control, including without limitation the Architect and Separate Contractors, in addition to an extension of the Contract Time as set forth in Section 8.3.1, Contractor shall receive equitable adjustment of the Contract Sum as compensation for all costs, expenses and damages incurred by Contractor as a result thereof.

§ 8.3.2.1 Intentionally deleted.

§ 8.3.3 Intentionally deleted.

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§ 8.3.4 Intentionally deleted.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form to substantiate its accuracy as the Architect may require. Upon approval by the Owner, and updated for changes in the Work, the schedule of values shall be used only as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The schedule shall not overvalue early job activities. Each item shall include a pro rata portion of overhead and profit. The schedule shall follow the trade divisions of the Specifications so far as practicable. The schedule of values shall be prepared in such a manner that each major item of Work, whether done by Contractor's own forces or by Subcontractors, is shown as a single line item on Contractor's Application for Payment. Contractor's fee shall be shown as a separate line item.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall include Contractor's cost for Contractor's fee, bonds and insurance, mobilization, and similar items shall be listed as individual line items. Contractor's costs for various construction items in the Schedule of Values shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items. All parties expressly acknowledge and agree that any and all individual line items on the Schedule of Values in the Contract Sum are not separately and individually guaranteed by the Contractor; rather, only the Contract Sum is guaranteed.

§ 9.3 Applications for Payment

§ 9.3.1 At the time specified in the Contract, the Contractor shall submit to Owner each Application for Payment, which shall be itemized and reflect operations completed in accordance with the Schedule of Values. Each application shall be notarized substantiating the Contractor's right to payment and must be accompanied by lien waivers from all Subcontractors, consultants, suppliers, and materialmen for the previous Application for Payment. The Contractor shall submit Applications for Payment in quadruplicate using AIA Document G702-1992 and G703-1992 Application and Certificate for Payment, 2009 Edition. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.1.1 Payments will be made on account of materials or equipment incorporated in the Work and suitably stored at the Site.

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

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

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§ 9.3.3 Upon payment by the Owner of the invoiced cost, Contractor shall ensure that title to all such materials and equipment shall irrevocably pass to the Owner. The Contractor warrants that title to all materials and equipment covered by an Application for Payment will pass to Owner upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests, or encumbrances. No work, material, or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST, OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH, OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.3.1 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The 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. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 9.5 Decisions to Withhold Certification

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

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

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

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

§ 9.5.4 Intentionally deleted.

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

§ 9.6 Progress Payments

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

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

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§ 9.6.3 The Owner may, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum or as required by applicable law, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

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

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

.1 Deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or

.2 Issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 The Work as set out herein will not be considered Substantially Complete unless and until, as a condition to Owner's obligation to pay Contractor, and the term Substantial Completion shall mean that the performance of the work is to the point where (1) all Project systems included in the Work are operational; (2) as to such Work, all

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required governmental inspections and certification required of Contractor have been made and posted; (3) as to such Work, designated initial instruction described in the Contract Documents of Owner's personnel in the operation of systems has been completed; (4) as to such Work, all the required finishes set out in the Contract Documents are in place; (5) the Work can be used by the Owner for its intended purpose; (6) a final completion list has been prepared by Contractor and approved by Owner; and (7) lien waivers, and guarantees for Work completed to that date have been delivered to Owner. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be sole judge of the detailed list of items of Work to be completed or corrected at the date of Substantial Completion which list will be no longer than one or two typed pages.

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

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

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

9.8.4.1 in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may reasonably deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's reasonable compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect. Except with the consent of the Owner, the Architect will perform no more than TWO (2) inspections to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum reasonable amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

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

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

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§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.9.4 In the event that Owner takes partial occupancy prior to Substantial Completion of the Project, Contractor shall obtain to the best of Contractor's ability an endorsement to Contractor's builder's risk policy to provide extended coverage for partial occupancy if Contractor's builder's risk coverage under the Contract Documents would not otherwise provide such coverage.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's 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. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed and after receipt of and satisfaction with all closeout documents identified in Section 9.10.2, 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 the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable, less any amounts withheld under the Contract. 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 and as a condition precedent to Owner's obligation to make the Final Payment and pay any retainage, the Contractor shall meet all the requirements of this Section 9.10.2 and shall submit to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, or will be paid or otherwise satisfied with the proceeds of final payment; (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 payments; (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;(6) Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706; (7) Contractor's Affidavit of Release of Liens, AIA Document G706A; (8) Consent of Surety to Final Payment, AIA Document G707; (9) Contractor's Guarantee – notarized; (10) Subcontractor's Guarantee – notarized(11) Subcontractor's Lien Releases – notarized(12) Three sets each of maintenance and instruction manuals bound in a 3" ring binder; (13) Final list of subcontractor (AIA Documents G705); (14) The documentation required under Sections 10.5, 10.6, and 10.7 of these General Conditions;

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and (15) Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. If the Contractor has satisfied the requirements herein and if the Owner is satisfied that the Work has been fully performed in accordance with the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum, including any retainage, shall be paid by the Owner to the Contractor thirty-one (31) days after Final Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion.

§ 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, corrected, 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 the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that 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** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except for any Claims then pending that comply with the requirements of Article 15.

§ 9.11 LIQUIDATED DAMAGES

§ 9.11.1 Failure of the Contractor to complete the Project within the Contract Time will result in damages being sustained by the Owner. Such direct damages are, and will continue to be, impracticable and extremely difficult to determine. Should Contractor fail to achieve Substantial Completion of the Project within the date established for Substantial Completion of the Project and/or Final Completion, Contractor and the surety shall be liable for and shall pay, as liquidated damages, the sum set forth in the Agreement (Section 4.5 of AIA A101-2017) for each calendar day of delay, after any authorized time extensions. From the compensation otherwise to be paid to the Contractor, the Owner may retain a sum sufficient to cover liquidated damages which may include, but may not be limited to, consultant fees, supervision, supplementation of forces by the Owner, loss of use, and loss of revenue for each calendar day that the Work remains uncompleted, which sum when presented by the Owner is agreed upon as the proper measure the Owner will sustain per day upon the failure of the Contractor to substantially complete the Work in the time stipulated. Execution of the Contract under these specifications shall constitute agreement by Owner and Contractor that the amounts stated in this paragraph are the minimum value of the costs and damages caused by failure of Contractor to substantially and/or finally complete the Work within the allotted times, that such sums shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs; except that if the liquidated damages exceed the amount owed to the Contractor under the Contract, then the Contractor or its surety shall pay any additional damages due. Notwithstanding the foregoing, Owner reserves the right to enforce and/or seek all other remedies and damages available in law or equity for Contractor's failure to perform any its other obligations, any other acts or omissions of Contractor, or any other breach or default of Contractor under the Contract.

§ 9.11.2 Owner and Contractor agree that late completion of the Work and/or delay of the Work due to defective or non-conforming Work will result in Owner being damaged in an amount estimated to be the liquidated damages amount to cover such damages to include, but not limited to, the following:

- **.1** for rental expenses and other costs for temporary buildings or alternative space obtained by the Owner due to loss of use of the Work or any part of the Work;
- **.2** additional professional services (e.g. architectural, engineering, administrative, and legal) and inspection costs;
- **.3** energy costs by continued use of less energy efficient facilities by Owner;

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.4 storage costs by reason of Owner having to store materials not ready for display, storage, or use in new facility; and

.5 transportation and labor costs by having to handle materials twice because new facility was not ready for display, storage, or use upon original arrival.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.1.2 Contractor's employees, agents, and Subcontractors and Sub-subcontractors shall not perform any service under this Contract while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug and alcohol free workplace while performing the Work. Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this Contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in any alcohol or drug test.

§ 10.1.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project Site, whether or not the owner thereof has a permit for a concealed weapon.

§ 10.2 Safety of Persons and Property

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

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; 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 implement, 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 the owners and users of adjacent sites and utilities. The Contractor shall also be responsible, included in the Contract Sum, for all measures necessary to protect any property adjacent to the Project and Improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

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

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

§ 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.

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

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

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Notwithstanding anything in the Contract Documents to the contrary, Owner shall not be responsible for any Hazardous Materials or Substances used, stored, or otherwise introduced to the Premises by the Contractor or Contractor's employees, contractors, subcontractors, or other person over whom Contractor has responsibility or control under this Contract. 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, as reasonable, the services of a licensed laboratory to verify the presence of or absence of the hazardous material or substance reported by the Contractor to be present and, in the event such hazardous material or substance is found to be present, cause it to be rendered harmless. The Owner shall provide a copy of the report from the person performing the tests under this Section 10.3.2 to Contractor. In the event of delay in the Construction Schedule caused by the testing required

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hereunder, the Contract Time shall be extended by a Change Order, for the number of days that the Project was suspended for the testing and any remediation. To the extent that the Cost of the Work is increased for Contractor's additional costs for shut down and remobilization caused by the testing and possible remediation hereunder, the Contract Sum shall be increased by Change Order for the actual and verifiable increase to the Contract Sum.

§ 10.3.3 Intentionally 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. When use or storage of explosives or other such Hazardous Substance or equipment at the Site is necessary for the Work, the Contractor shall give Owner a written request for same. No work shall proceed involving such storage or use unless approved in writing by the Owner.

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

(Paragraph deleted)

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

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

§ 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

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

§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

§ 10.6.1 Intentionally deleted.

§ 10.7 HAZARDOUS MATERIALS CERTIFICATION

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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Guide and shall be satisfactory to the Owner. Insurance to be provided under the Contract include the requirement that private entities performing work at the Site, and exempt from the coverage on account of number of employees or occupation, shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. No Work will be commenced until all requirements of this Article have been approved by the Owner in writing. The Owner will be furnished an acceptable certificate of insurance, prior to the commencement of any Work.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in Exhibit A of the Agreement. Coverages written on an occurrence basis shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final Payment. The coverage afforded under the general liability insurance shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

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

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

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

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

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

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

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability as it elects.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to

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provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Notwithstanding any provision to the contrary, the waiver of subrogation rights under the property insurance coverage in favor of the Architect, Architect's consultants, separate contractors described in Article 6 of the General Conditions of the Contract, if any, and any of the subcontractors, agents and employees shall be limited to such parties' site activities only, and shall not include any professional liability related to errors or omissions in their design or engineering services.

(Paragraph deleted)

§ 11.3.2 Until the Work is substantially completed and accepted by the Owner, the Contractor shall purchase and maintain property insurance upon the entire Work at the Site to the full insurable value thereof. The property insurance shall also cover portions of the Work stored off Site after written approval of the Owner of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage including flood and earthquake and shall include all risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. This all risk policy shall be written Incorporating Texas Form No. 21 (Actual Completed Value Form) and Form No. 77 (General Change Endorsement) Incorporating the following language:

> Permission is given for the Project Insurance hereunder to become occupied, the insurance remaining in full force and effect until such time as the Project has been accepted by the Owner, all as currently approved by the Texas Board of Insurance Commissioners.

The policy shall include coverage for Explosion, Collapse and Underground (ECU). Such insurance shall be evidenced by the kind of policy that does not have to be adjusted or reported upon periodically, but provides constant insurance at full one hundred percent (100%) of all insurable values as they are created during construction by

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performance of the Contract. The Certificate of Insurance must include the names of the Insured Contractor and the Board of Trustees of the Owner.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the 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 11.5.2. 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.

§ 11.5.2 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within 10 business days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

§ 11.6.1 The Owner requires the Contractor to furnish payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract in a total amount equal to 100% of the Contract Sum and in conformity with applicable law. All bonds shall be issued by a surety company licensed, listed, and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for the Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurers capital and surplus.

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

§ 11.6.3 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting if the Contract has been executed by Owner. All Bonds will be reviewed by the Owner for compliance with the Contract Documents prior to the execution of the Contract.

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

§ 11.6.5 Bonds shall guarantee the faithful performance of all the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, all payment or money due to the Contractor may be withheld until Contractor provides additional surety.

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

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.

§ 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, 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 thereunder, except as may be specifically agreed upon in writing.

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§ 13.4 Tests and Inspections

§ 13.4.1 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. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due in accordance with Section 2251.025 of the Texas Government Code. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 EQUAL OPPORTUNITY

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

.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or age; and

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

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§ 13.7 CONTRACTOR ACCOUNTS, RECORDS AND INSPECTION

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

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

§ 13.8 CERTIFICATE OF NONSEGREGATED FACILITY

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

§ 13.8.2 By the signing of this Contract, the Contractor signifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The undersigned agrees that a violation of this certification constitutes a breach of this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, Work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except where it obtained identical certifications from proposed consultants for specific time period) it will obtain identical certifications from proposed Subcontractors prior to the award of a contract exceeding $10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods): Notice to Prospective Subcontractors of requirement for certification of nonsegregated facilities. A certification of nonsegregated facilities, as required by the May 19, 1967 Order (32 FR 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

§ 13.9 PREVAILING WAGE RATES

§ 13.11.1 In compliance with laws of the State of Texas relating to labor (Acts 1933, 43 Leg. P. 91 Chapter 45) the building construction wage rates listed in the Contract Documents have been ascertained and determined by the Owner as the general prevailing rates in the locality of the Owner for the classifications listed. The Contractor and each Subcontractor shall pay to all laborers, workers, and mechanics employed by them in the execution of this Contract not less than such rates for each craft or type of workers or mechanic needed to execute the Contract. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the rates shown hereinafter.

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

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

.1 The Work has been stopped for thirty (30) consecutive days because of court order, of act by any government authority having jurisdiction over the Work, or by order of Owner in accordance with the Contract Documents, provided that such stoppages are not due in whole or part to the acts or omissions of the Contractor, or any employee, consultants, Subcontractors, Sub-subcontractors, or any other person for whose acts or omissions the Contractor may be responsible;

.2 Owner's failure to provide Contractor with any information, permits, or approvals that are Owner's responsibility under the Contract Documents that result in the Work being stopped for thirty (30) consecutive days even though Owner has not ordered Contractor in writing to stop and suspend the Work in accordance with the Contract documents;

.3 Owner's failure to cure the problem as set forth in the Contract Documents after Contractor has stopped the Work; or

.4 Owner has not made payment of undisputed sums due on an approved Application for Payment within the time to cure provided in the Contract.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount that would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1

(Paragraphs deleted)

Owner may terminate the Contract for cause for Contractor's material breach of any provision of the Contract upon written notice to the Contractor specifying the provisions so breached. After receiving written notice of breach, Contractor shall have ten (10) days to cure the breach. If the Contractor fails to cure or reasonably commences to cure the breach within the time period so prescribed, the Owner may declare the Contract terminated and may enter upon

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the premises and may take possession of all materials, appliances, and other items that have been purchased or provided by payments to the Contractor for the performance of the Work and may complete the Work. All such materials, appliances, and other items purchased by the Contractor as set forth herein hereby transfers, assigns, and sets over to Owner for all purposes only to the extent of receipt of payment from the Owner for such items.

§ 14.2.2
(Paragraphs deleted)
In the event of termination under Section 14.2, except for payment for Work satisfactorily performed in accordance with the Contract up to the date of termination, Contractor shall not be entitled to receive any further payments under the Contract. In addition to termination and any other remedies for breach or default that are provided under this Contract, including this Section 14.2, the Owner may pursue any other rights or remedies available to the Owner in equity or at law.

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

§ 14.2.4 Intentionally deleted.

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

§ 14.3.2 The Contract Sum and Contract Time may be adjusted for reasonable, actual, and verifiable increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include the cost associated with the termination of the contract including all labor, equipment and materials and the balance of the Contractor's fee supervisory labor and reasonable profit. No adjustment shall be made to the extent:

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

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

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

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

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

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(a) of this Section 14.4.3. Contractor shall further be entitled to overhead costs incurred and demonstrated directly arising out of early termination.

§ 14.5 BANKRUPTCY OF CONTRACTOR

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

.1 The Contractor, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Contractor to perform all future material obligations under the Contract, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Contractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 Intentionally deleted.

§ 15.1.5 Claims for Additional Cost

(Paragraph deleted)

Intentionally deleted.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

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§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.**§ 15.2.2** The Architect will review Claims and within ten 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) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest. **§ 15.2.3** Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.**§ 15.2.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.
§ 15.2.5 Intentionally deleted**§ 15.2.6** Intentionally deleted.**§ 15.2.6.1** Intentionally 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.
(Paragraphs deleted)
§ 15.2.8 It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4 and 9.10.5, shall be subject to mediation as a condition precedent to litigation.

§ 15.3.2 Intentionally deleted.

§ 15.3.3 Intentionally deleted.

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

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§ 15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration

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

ARTICLE 16 BUSINESS ETHICS

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

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

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.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day both parties have signed below.

OWNER:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

By:

Signature

Steve Flores, Interim Superintendent
(Printed name and title)

Date:

(Paragraphs deleted)

CONTRACTOR:
LIBERTY CIVIL CONSTRUCTION, LLC

By:

Signature

Michael Ehrhardt, Managing Partner/President
(Printed name and title)

Date:

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PAGE 1

Phase 1 – Private Drive & Reimers-Peacock Public Road

...

Lake Travis Independent School District
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000

...

Malone Wheeler
5113 Southwest Parkway #260
Austin, TX 78735
512-899-0601

THE CONTRACTOR:

Liberty Civil Construction
2937 Hero Way
Leander, TX 78641

PAGE 2

15 CLAIMS AND DISPUTES

16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

PAGE 10

The Contract Documents ~~are enumerated in the~~ shall consist of the Standard Form of 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,~~ (AIA Document AIA A101-2017) as modified by the parties for the Project including all Addenda and Exhibits thereto ("Agreement" or "Contract"); the General Conditions (AIA A201-2017 General Conditions of the Contract for Construction), as modified by the parties for the Project ("General Conditions"); any Supplementary Conditions; prepared by The Architect; all amendments to the Agreement; all amendments to the General Conditions; the Contractor's proposal, and written addenda to the proposal; the

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Construction Documents approved by Owner; the Contractor's bonds and proof of insurance; the Drawings, Specifications; Addenda issued prior to the execution of the Contract; other documents identified as Contract Documents in the Contract; and Modifications issued after execution of the Contract. A Modification is ~~(1) a~~ (1) a written amendment to the Contract signed by both parties, ~~(2) a Change Order, (3) a Construction Change Directive, or (4) a~~ (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the ~~Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not 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 or proposal requirements.~~work issued by the Architect.

...

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 Construction Documents become part of the Contract when accepted by the Owner. All sections of the Project Manual shall be a part of the Contract, including any Proposal signed by the Contractor, and any Request for Proposals for the Project ("RFP"). The Contract may be amended or modified only by a ~~Modification.~~ written Modification signed by the Owner. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

...

The term "Work" means ~~the construction and services required by the Contract Documents,~~ all construction services required by, intended by, and included in the Contract Documents for the Project and each sub-project, if applicable, 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.~~ parts, supplies, skills, supervision, transportation, services, and other facilities and things necessary, proper, or incidental for the Contractor to carry out and complete its obligations under the terms of the Contract. The Work may constitute the whole or a part of the Project.

...

~~**§ 1.1.7 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.~~

§ 1.1.7 CONSTRUCTION DOCUMENTS

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

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

1.1.9 All references to "Contractor" shall include "Construction Manager at Risk" or "Construction Manager," where applicable.

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§ 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~~ 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.~~Documents.

...

§ 1.2.4 Conflicts or discrepancies among the Contract Documents shall be resolved in the following order of priority: (1) the Agreement (including any attachments), as may be modified or amended; (2) these General Conditions; (3) any Supplementary Conditions; (4) Drawings and Specifications; (5) other documents forming the Contract Documents and Modifications issued after the execution of the Contract. Except as otherwise specified herein, amendments, revisions, and Modifications of later date take precedence over those of earlier date. Drawings govern Specifications for quantity and location, and Specifications govern Drawings for quality and performance requirements. If there is a discrepancy in the quantity or quality stated, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality.

§ 1.2.5 STANDARDS AND REQUIREMENTS

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

1.2.5.1 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of Contractor's Proposal. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.6 OPTIONAL MATERIALS AND PROCESSES

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

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

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§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other~~

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~~reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~Intentionally deleted.

§ 1.5.2 The Contractor, Subcontractors, ~~Sub-subcontractors, and~~ Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the ~~Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8,~~ Construction Documents provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the ~~Instruments of Service.~~ Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the ~~Instruments of Service~~ Construction Documents on other projects or for additions to ~~the~~ this Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~Owner and Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in dereliction of any copyrights or other reserved rights. Except for its record set, Contractor shall deliver all copies of the Construction Documents to Owner upon the earlier to occur of the Owner's request, completion of the Work, or termination of the Contract.

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The parties shall endeavor to agree upon ~~written~~ protocols governing the transmission and use ~~of, and reliance on,~~ of Instruments of Service or any other information or documentation in digital form. The parties may upon written agreement use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

~~**§ 1.8 Building Information Models Use and Reliance**~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

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

§ 1.9 Building Information Models Use and Reliance

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§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of Lake Travis ISD, and is referred to throughout the Contract Documents as if singular in number. The Owner ~~shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1 the Architect does not have the authority to bind the Owner. The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of any such consultant.

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~It shall be distinctly understood that by virtue of this Contract, neither the Contractor nor any contractor, subcontractor, sub-subcontractor, consultant, design professional, mechanic, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated. It shall be further understood that this Contract is not written for the benefit of third parties nor shall it be construed to create any third party beneficiaries.

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

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§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Upon written request of Contractor, Owner shall provide reasonable evidence that funds have been appropriated for the project in accordance with Texas law.

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

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~If requested by the Contractor, the Owner shall furnish surveys describing physical characteristics, legal limitations, utility locations, and legal description for the Site of the Project. The Contractor shall exercise proper precautions relating to the safe performance of the Work and shall independently determine the location of all utility lines before beginning the Work.

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may~~

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~~disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

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§ 2.3.4 ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations 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.~~Intentionally deleted.

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~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, 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.~~

§ 2.4.1 If the Contractor defaults or fails to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of a written notice from Owner to commence and continue correction of such default or neglect, the Owner may after the ten (10) day period order the Contactor to stop work until such deficiencies have been corrected, subject to the other terms of this Agreement.

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~~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 notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments~~

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

2.5.2 After the Work or any portion thereof has stopped prior to final completion, the Owner may make necessary emergency repairs to the Work if necessary to prevent further damage if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in the work provided by the Contractor or any of Contractor's consultants, Subcontractors, Sub-subcontractors, suppliers, or materialmen. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

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

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

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§ 3.2.1 The Owner and Contractor agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. 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.~~thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any discernable errors or, inconsistencies in the Contract Documents which would delay the Contractor in the performance of the Contract Work.

§ 3.2.2 ~~Because~~ Since the Contract Documents are complementary, ~~the Contractor shall,~~ before starting each portion of the Work, ~~carefully study and compare the various~~ the Contractor shall exercise reasonable care to (1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4, shall~~ Section 2.2.3, (2) take field measurements of any existing conditions related to that portion of the ~~Work, and shall~~ Work and (3) 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 any~~ Documents. Any errors, inconsistencies or omissions discovered by ~~or made known to the Contractor~~ the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. ~~It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~In beginning each portion of the Work, the Contractor represents that it has exercised reasonable care to visit and examine the Site and its surroundings and evaluate the visible condition of the Site and the Work. The circumstances evaluated by Contractor are the location and nature of the Work; and the form and nature of the Site. The Contractor further represents that it has exercised reasonable care to familiarize itself with the local conditions under which the Work is to performed, the location and character of existing or adjacent work or structures, the Contract Documents, the extent and nature of the Work and materials necessary for carrying out and completing the Work, the general character and accessibility of the Site, the applicable laws (including labor laws), and the accommodations the Contractor may require. Contractor further represents that it has correlated its visible observations with the requirements of the Contract Documents; and subject to the right to rely upon specific information as may be set forth herein, has assumed the risk of such visible conditions. The Contractor shall not, except as expressly provided in the Contract Documents, be entitled to any extensions of the Contract Time or to any adjustment of the Contract Sum on grounds of misinterpretation or misunderstanding of any such matter that could not have been discovered through the exercise of reasonable care, nor shall it, except as provided in the Contract Documents, be released from any of the risks accepted or obligations undertaken by it under the Contract Documents. Furthermore, in the event that Contractor relies upon such information, the Contractor may not rely upon such information when it knows or reasonably should have known that the information is inaccurate, inadequate, incomplete, or otherwise unfit for its intended purpose, or would infringe the intellectual property rights of third parties. Notwithstanding the foregoing, the Contractor shall not be responsible for evaluating the geotechnical conditions at the site, nor ensuring that the design documents are consistent with or compliant with the recommendations of any geotechnical engineer. Moreover, the parties recognize and agree the Contractor is not a

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design professional. All site investigations are limited to what is discernible upon reasonable visual inspection. Contractor is not required or responsible for identifying errors, omissions, discrepancies or defects in the Contract Documents that are the responsibility of the Architect and its consultants.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, ~~codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.~~building codes, and rules and regulations, but any non-conformity discovered by or which was made known to the Contractor, shall be reported promptly to the Owner.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor its warranty, it shall promptly notify the Owner in writing, providing substantiation for its position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect ~~issues~~ or Owner in response to the Contractor's notices or requests for information pursuant to ~~Sections 3.2.2 or 3.2.3,~~ Section 3.2.2, the Contractor shall ~~submit~~ make Claims as provided in Article 15. If the Contractor fails to perform the obligations of ~~Sections 3.2.2 or 3.2.3,~~ Section 3.2.2, the Contractor shall pay such costs and damages to the ~~Owner, subject to Section 15.1.7,~~ Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor ~~performs those~~ meets these obligations, the Contractor shall not be liable to the Owner ~~or Architect~~ for damages resulting from errors, inconsistencies or omissions in the Contract ~~Documents,~~ Documents or 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.~~Documents.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or ~~procedures.~~ procedures; however Contractor is not required to proceed until a mutually agreeable alternative is determined.

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§ 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. Provided, however, under no circumstances shall Contractor be responsible or liable to Owner for work performed by others that is defective or in improper condition and not actually discovered by Contractor through the exercise of commercially reasonable diligence.

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

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§ 3.3.5 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*

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

§ 3.3.7 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on schedule. Contractor shall be entitled to compensation from the Construction Contingency , or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that the Substantial Completion or Final Completion cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within five (5) business days after the date of receipt of any request by Owner for resequencing or acceleration , a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet Substantial Completion or Final Completion.

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

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

§ 3.4.2.2 The Contractor must submit to the Owner (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the time of completion of the Work and the construction schedule; and (iv) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings; and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Owner. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to allow the Owner no less than seven (7) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Furthermore, upon Owner's instruction, Contractor may not use any employee, subcontractor, supplier or vendor in the performance of the Work to whom the Owner makes a reasonable objection.

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

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

§ 3.5.2 ~~All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.~~Contractor shall certify and warrant that the Project has been constructed in compliance with the Contract Documents.

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

§ 3.5.4 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction or replacement of the defective items, when notified by the Owner. Except as otherwise provided by law or where a longer period is specified or where a longer period is included in a manufacturer's warranty, the warranty period for workmanship of the Contractor, consultants, subcontractors and sub-subcontractors shall be one (1) year from the Date of Substantial Completion.

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

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

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

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

~~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.~~**§ 3.6.1** The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sales, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall issue Certificates of Exemption to its Subcontractors and suppliers in lieu of said taxes for all such materials and supplies and shall obtain Certificates of Resale from Contractor suppliers. Failure of Contractor to issue Certificates of Exemption or to obtain Certificates of Resale from Contractor suppliers shall make the Contractor responsible for absorbing the tax, without compensation from Owner.

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

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

...

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

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construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days 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 that~~ an equitable adjustment shall be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of or revising of services to the Project. The Contractor shall inform the Owner at once when the Owner's participation is required. Connections for temporary utilities required for the Work are the responsibility of the Contactor. Unless otherwise provided in the Contract Documents, payment for temporary services, tap charges, and water meter charges shall be the responsibility of the Contractor. Payment for permanent utility services shall be the responsibility of the Owner. The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities, as well as the National Pollutant Discharge Elimination System (NPDES). All of the foregoing expenses paid by the Contractor shall be considered Costs of the Work.

...

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

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Such superintendent shall remain full-time on the Project until all items of the punch list are completed and accepted by the Owner. Prior to execution of the Contract, the Contractor shall furnish a list to the Owner of all consultants, job-site superintendent(s), Subcontractors, and suppliers involved in the Project. Notwithstanding the foregoing, Contractor shall keep on the job the superintendent approved by Owner who shall not be transferred from the Work without Owner's consent (which shall not be unreasonably withheld). However, such obligation to furnish the superintendent shall not be construed (1) to preclude the promotion within Contractor's organization of any person assigned to Work, or (2) to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner reasonably determines that any employee of Contractor or of its Subcontractors is careless, not qualified to perform the Work assigned to him, incompetent, insubordinate, or acts in violation of any provision of these Contract Documents, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employees, the Contractor shall promptly remove such employee from the Work and replace such employee. All times while activities are being performed in Contractor's office, Contractor shall appoint an individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests, and decisions of Owner. All of Contractor's and Subcontractor's personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions in any material respect.

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§ 3.10.1 ~~The~~ If the bid documents contain a Project schedule setting out the beginning and ending of construction, or if there are any other limits on the time of performance set out in the Contract Documents, the Contractor, promptly after being awarded the Contract, shall ~~submit for the Owner's and Architect's information a Contractor's construction~~

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~~schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and~~ develop a construction schedule reasonably defining a plan for completing the Work within the required time. The format and detail of the schedule shall be in keeping with the size and complexity of the Project and in conformity with the Contract Documents. The schedule and any updates thereof shall be subject to approval of the Owner. The schedule and any updates shall not exceed time limits current under the Contract ~~Documents. The schedule~~ Documents (including granted time extensions) and shall be revised at appropriate intervals as ~~required by the conditions of the Work and Project.~~reasonably required by the Contractor, shall be related to the entire project (if more than one Contract is involved in the Project), and shall provide for expeditious and practicable execution of the Work. All updated schedules shall address the subject of how the Contractor intends to overcome any delays previously encountered.

...

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, provided that this provision shall not impact any requirement otherwise agreed to between the Owner and the Architect regarding progress meetings, or at such other time and frequency as are acceptable to or requested by the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Owner with each monthly application for payment a copy of the progress schedule showing all Modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein.

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

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

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

§ 3.10.6 The Owner shall have the reasonable right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's reasonable request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. In the event the rescheduling of the Work results in delays or additional costs incurred by the Contractor for which it could not have reasonably foreseen, or as required by the Contract Documents; the Contractor will be compensated accordingly for both.

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§ 3.12.11 Adequate copies of shop drawings for architectural, structural, mechanical, and electrical work shall be submitted to the Architect or Owner for review. The Contractor shall submit complete drawings, data, and samples to

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the Architect or Owner at least ten (10) days prior to the date the Contractor needs the reviewed submittals and samples returned. Once samples of all key items are received, the Architect or Owner will finalize color selections. There may be occasions where review and responses in less than the 10 days are warranted. For these instances the Contractor shall notify the Owner and Architect of this need and they shall put all efforts forward to meet the Contractor's deadline.

§ 3.12.12 The Contractor shall submit electronic files of product data and two (2) samples to the Architect or Owner. One additional set may be requested for the Owner's representative. Where shop drawings are involved, the Contractor shall submit electronic files of the shop drawing for the Owner. After final review and correction of the submittal, if necessary, the Contractor shall send one corrected set to the Owner.

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

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

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

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

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

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

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

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3.14.3 No cutting of structural elements that are not identified on the Contract Documents unless required to complete the Work will be permitted unless specifically approved in writing by Owner.

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials ~~and~~ 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.~~Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or

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other like flammable waste shall be collected and removed from the building and premises. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition. The Contractor shall be responsible for the protection of the Work, including damaged or broken glass caused by the construction operations.

...

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

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

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

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§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND, RELEASE AND HOLD HARMLESS OWNER, AND ITS REGENTS, BOARD MEMBERS, OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, SUCCESSORS AND ASSIGNEES (COLLECTIVELY, "THE INDEMNIFIED PARTIES") OF, FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, PENALTIES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT, WRONGFUL, OR TORTIOUS ACT OR OMISSION OF THE CONTRACTOR, CONTRACTOR'S SUBCONTRACTORS, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE THAT THEY CONTROL (COLLECTIVELY, "THE LIABILITIES"), REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A

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CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES. IN THE EVENT OF FAILURE BY THE CONTRACTOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION SECTION, EACH OF THE INDEMNIFIED PARTIES, AT ITS OPTION, AND WITHOUT RELIEVING CONTRACTOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM, BUT ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES, OR ANY OF THEM SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE, PROVIDED, HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

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

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

It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.2 In claims against any person or entity indemnified under this ~~Section 3.18~~ Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by ~~them,~~ them or anyone for whose acts they may be liable, the indemnification obligation under ~~Section 3.18.1~~ Section 3.18.1 shall not be limited by a limitation on

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amount or type of damages, ~~compensation,~~ compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit ~~acts, or other employee benefit acts.~~acts or other employee benefit acts.

3.18.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

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

§ 3.19 RESPONSIBLE RECORD DRAWINGS

§ 3.19.1 At Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

§ 3.20 PREVAILING WAGE RATES

§ 3.20.1 No person employed by the Contractor or any of the Contractor's consultants or Subcontractors may be paid less than the minimum wage rate, as provided in Texas Government Code Chapter 2258.

§ 3.21 ANTITRUST VIOLATION

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

§ 3.22 REPRESENTATIONS AND WARRANTIES

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

.1 It is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 It is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 It is authorized to do business and in good standing in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it, over the Work, and over the Site of the Project;

.4 The execution of the Contract and its performance thereof is within its duly authorized powers;

.5 By submission of a proposal, it has reviewed the plans, specifications, and the Site, and that from its own visual investigations, has satisfied itself as to the nature and location of the Work, the character, quality, and quantity of surface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance; and

.6 It acknowledges and understands that the Owner will make no allowance on behalf of the Contractor for any error or negligence on the part of the Contractor for not having visited the Site or not having thoroughly familiarized itself with all of the documents before submitting a proposal.

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. ~~The~~ Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications~~ Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect and Owner's Program Manager, if applicable, 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~~ separate contractors shall be through the Owner. The ~~Contract Documents may specify other communication protocols.~~Owner may use a representative or agent to perform some of the administrative functions of the Project on behalf of the Owner. The Contractor; Architect; other design professionals and consultants; and the Owner and/or the representative or agent shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or the representative or agent, including the use of the representative or agent, may be changed by Owner during the Project.

...

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or 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. The fact that the Architect may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

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§ 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~~

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~~and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

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

...

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The selection of subcontractors shall be in accordance with Section 2269.256 of the Texas Government Code.
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§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not ~~substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.~~sublet the Work as a whole. The approval of Subcontractors in no way relieves the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents.

...

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

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

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

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

§ 5.4 ~~Contingent Assignment of Subcontracts~~ Intentionally deleted.

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

§ 5.5 RESPONSIBILITY

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

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§ 6.1.1 The ~~term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.~~Owner reserves the right to perform other construction work, maintenance, and repair work, and school program operations at the Site and near the Site during the time period of the Work as long as such work is bid in compliance with Chapter 2269 subchapter F of the Texas Government Code. Owner may perform other work with separate contractors or forces at Owner's sole discretion. Owner shall have access to the building on the Site at all times. If the Contractor claims that delay or additional cost is involved because such action by the Owner as set forth in this Section 6.1.1, the Contractor may make such Claim as provided in Article 15.

...

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

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

...

§ 6.2.2 If part of the Contractor's Work ~~depends~~ depends, for proper execution or ~~results~~ results, upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of ~~apparent~~ discovered discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. ~~Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.~~ The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor ~~that are not apparent.~~except to the extent such defects are actually discovered by Contractor in the exercise of reasonable care and not reported to the Architect as set forth in this section.

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

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

...

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract ~~Documents. The Contractor shall proceed promptly with changes in the Work,~~ Documents, and the Contractor shall proceed promptly,

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unless otherwise provided in the Change Order, Construction Change ~~Directive,~~ Directive or order for a minor change in the Work. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order.

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

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

...

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

...

.2 The change is necessary;
.3 The amount of the adjustment, if any, ~~in the Contract Sum; and~~to the Contract Sum and prices submitted by the Contractor; and
~~**.3** The extent of the adjustment, if any, in the Contract Time.~~**.4** The extent of adjustment, if any, to the Contract Time.

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

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

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

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

§ 7.2.6 Nothing contained herein shall limit the right of Owner to order changes in Work by Change Orders that have not been signed by Contractor, and Contractor shall promptly perform all Work required under the Contract Documents or a Change Order despite its failure to execute the Change Order. However, the Owner shall issue and execute a Change Order authorizing payment for all undisputed amounts.

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

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

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§ 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~~ and stating a proposed basis for adjustment, if any, in the ~~Contract~~ Contractor Sum or Contract Time, or ~~both. The~~ both, prior to agreement on any such adjustment. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

...

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

~~.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~

~~.2 Unit prices stated in the Contract Documents or subsequently agreed upon;~~

~~.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~

~~.4 As provided in Section 7.3.4.~~The Construction Change Directive shall include the Owner's unilateral change in the Contract Time reflecting the Owner's reasonable view of the appropriate change in the Contract Time for the change in the Work covered by the Construction Change Directive. Until agreement is reached by the Owner and Contractor on these issues, the changes in Contract Time set out in the Construction Change Directive shall be used for scheduling purposes. Nothing herein shall be deemed a waiver of Contractor's right to dispute any Construction Change Directive.

§ 7.3.4 ~~If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:~~

~~.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;~~

~~.2 Costs 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;~~

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~~.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and~~

~~.5 Costs of supervision and field office personnel directly attributable to the change.~~Intentionally deleted.

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

§ 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.~~ documentation submitted by the Contractor to substantiate the decrease and is confirmed by the Architect and approved by the Owner. 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.~~change and approved by the Owner.

...

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

.1 Reasonable cost of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;

.2 Materials, supplies and equipment including cost of transportation, whether incorporated or consumed;

.3 Rental cost of machinery and equipment, exclusive of hand tools, at rates that are no greater than market rates in the locale of the Work at the time of the Work;

.4 Premiums for all bonds and insurance permit fees and sales, use or similar taxes related to the Work;

.5 Cost of Subcontractor for performing the change in the Work. The amount allowable for Subcontractors shall be calculated using the same standards set out herein for direct Work by the Contractor; and

.6 Additional costs of supervision and field office personnel directly attributable to and necessarily required for such charges.

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

§ 7.5 Allowance balances may be used to fund changes in the work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances. Provided the allowance was required per the Contract Documents or Owner to be included in Contract Sum, or was added to the Contract Sum by Change Order without overhead, profit or fee mark-up.

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§ 8.1.3 The date of Substantial Completion ~~is the date certified by the Architect in accordance with Section 9.8.~~and Final Completion are the dates certified by the Architect and approved by the Owner 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. The term "business day" shall mean a day on which the Owner's administrative offices are open for business and not a holiday as set forth in Chapter 662 of the Texas Government Code.

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...

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~The occurrence of an event which interferes with the ability of a Party to perform its obligations or duties hereunder which is not a) within the reasonable control of the Party affected and b) could not with the exercise of commercially reasonable diligence have been avoided or mitigated ("Force Majeure Event") including but not limited to acts of government, tariffs, acts of God, war, rebellion, strikes or lockouts, epidemics or health crisis (whether arising from existing or unknown pathogens/contagions), landslides, lightning, earthquakes, fires, named tropical storms (including, but not limited to hurricanes or hurricane warnings), crevasses, floods, washouts, or inability to secure any required consents, approvals, or permits for the Work, shall entitle the affected Party to suspension of its performance under this Contract to the extent prevented by the Force Majeure Event and for so long as the Force Majeure Event continues, plus any reasonable time necessary to recover from the Force Majeure Event and resume the Work. The affected Party shall make commercially reasonable efforts to resume performance and shall give written notice to the other Party as soon as reasonably practical during or after the occurrence of such Force Majeure Event. Upon termination of the Force Majeure Event, the performance of any suspended obligation or duty shall recommence as soon as commercially and reasonably practical. The Party affected by the Force Majeure Event shall not be liable to the other Party for any delay or other damages, costs, or expenses arising out of or relating to the suspension or termination of any of its obligations or duties under this Contract by reason of the occurrence of the Force Majeure Event, provided such Party complies in all material respects with its obligations under this Section.

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

§ 8.3.2 In the event Contractor is delayed due to acts, omissions or other fault of the Owner or those under the Owner's control, including without limitation the Architect and Separate Contractors, in addition to an extension of the Contract Time as set forth in Section 8.3.1, Contractor shall receive equitable adjustment of the Contract Sum as compensation for all costs, expenses and damages incurred by Contractor as a result thereof.

§ 8.3.2.1 Intentionally deleted.

§ 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.~~Intentionally deleted.

§ 8.3.4 Intentionally deleted.

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

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~**§ 9.2.1** Where the Contract is based on a stipulated sum, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form to substantiate its accuracy as the Architect may require. Upon approval by the Owner, and updated for changes in the Work, the schedule of values shall be used only as a basis for reviewing the

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Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The schedule shall not overvalue early job activities. Each item shall include a pro rata portion of overhead and profit. The schedule shall follow the trade divisions of the Specifications so far as practicable. The schedule of values shall be prepared in such a manner that each major item of Work, whether done by Contractor's own forces or by Subcontractors, is shown as a single line item on Contractor's Application for Payment. Contractor's fee shall be shown as a separate line item.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall include Contractor's cost for Contractor's fee, bonds and insurance, mobilization, and similar items shall be listed as individual line items. Contractor's costs for various construction items in the Schedule of Values shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items. All parties expressly acknowledge and agree that any and all individual line items on the Schedule of Values in the Contract Sum are not separately and individually guaranteed by the Contractor; rather, only the Contract Sum is guaranteed.

...

§ 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, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data~~ the time specified in the Contract, the Contractor shall submit to Owner each Application for Payment, which shall be itemized and reflect operations completed in accordance with the Schedule of Values. Each application shall be notarized substantiating the Contractor's right to payment ~~that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.~~and must be accompanied by lien waivers from all Subcontractors, consultants, suppliers, and materialmen for the previous Application for Payment. The Contractor shall submit Applications for Payment in quadruplicate using AIA Document G702-1992 and G703-1992 Application and Certificate for Payment, 2009 Edition. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 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.~~Payments will be made on account of materials or equipment incorporated in the Work and suitably stored at the Site.

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§ 9.3.3 Upon payment by the Owner of the invoiced cost, Contractor shall ensure that title to all such materials and equipment shall irrevocably pass to the Owner. The Contractor warrants that title to all ~~Work~~ materials and equipment 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.~~Owner upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests, or encumbrances. No work, material, or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST, OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH, OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.3.1 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that

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releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

...

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

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

- **.1** ~~defective Work not remedied;~~Defective Work not remedied after receipt of notice from Owner identifying such Defective Work;
- **.2** ~~third~~ Third party claims filed or reasonable evidence indicating probable filing of such ~~claims,~~ claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** ~~failure~~ Failure of the Contractor to make payments ~~properly to Subcontractors or suppliers for labor, materials or equipment;~~timely and properly to Subcontractors or for labor, materials or equipment in accordance with Contractor's agreements with such parties;
- **.4** ~~reasonable~~ Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract ~~Sum;~~Sum together with a detailed accounting supporting the Owner's conclusion;
- **.5** ~~damage~~ Damage to the Owner or ~~a Separate~~ another contractor caused by Contractor;
- **.6** ~~reasonable~~ Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** ~~repeated~~ Persistent failure to carry out the Work in accordance with the Contract ~~Documents.~~ Documents after receipt of notice from the Owner identifying such failure.

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

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

...

§ 9.6.1 ~~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.~~Once each month, the Owner shall make a progress payment of undisputed amounts to the Contractor on the basis of a duly certified and approved payment application for the Work performed during the preceding month under this Contract Owner's obligation to

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pay Contractor is a dependent covenant conditioned upon Contractor's satisfactory performance under the Contract. To ensure the proper performance of the Contract, the Owner will retain five percent (5%) of the amount of each payment for the completed Work. All materials and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made, or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under this Contract.

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

§ 9.6.3 The ~~Architect will,~~ Owner may, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract ~~Sum,~~ Sum or as required by applicable law, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

...

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~

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

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

.1 Deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or

.2 Issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

...

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

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

9.8.4.1 in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may reasonably deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's reasonable compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect. Except with the consent of the Owner, the Architect will perform no more than TWO (2) inspections to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum reasonable amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.5 ~~The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any,~~ Thirty (30) days after completion of all incomplete work or correction of defective work as outlined in the Certificate of Substantial Completion, upon receipt of Consent of Surety, and upon the Owner's receipt of all Close-out

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documents as described in the Specifications, the Owner shall make payment of ~~retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~retainage, except for amounts required to be withheld pursuant to Texas Government Code 2253.

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

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under ~~Section 9.8.2.~~ the Contract Documents. 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.~~Architect and Owner.

...

§ 9.9.4 In the event that Owner takes partial occupancy prior to Substantial Completion of the Project, Contractor shall obtain to the best of Contractor's ability an endorsement to Contractor's builder's risk policy to provide extended coverage for partial occupancy if Contractor's builder's risk coverage under the Contract Documents would not otherwise provide such coverage.

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully ~~performed,~~ performed and after receipt of and satisfaction with all closeout documents identified in Section 9.10.2, 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 the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and ~~payable.~~ payable, less any amounts withheld under the Contract. 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~~ and as a condition precedent to Owner's obligation to make the Final Payment and pay any retainage, the Contractor shall meet all the requirements of this Section 9.10.2 and shall submit to the Architect and Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, or will be paid or otherwise satisfied with the proceeds of final payment; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect,~~ 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,~~ Documents; (4) consent of surety, if any, to final ~~payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6)~~ payments; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as ~~receipts and~~ receipts, releases and waivers of liens, claims, security ~~interests,~~ interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a

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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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance~~ 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 ~~the lien, claim, security interest, or encumbrance,~~ such lien, including all costs and reasonable attorneys' ~~fees.~~fees;(6) Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706; (7) Contractor's Affidavit of Release of Liens, AIA Document G706A; (8) Consent of Surety to Final Payment, AIA Document G707; (9) Contractor's Guarantee – notarized; (10) Subcontractor's Guarantee – notarized(11) Subcontractor's Lien Releases – notarized(12) Three sets each of maintenance and instruction manuals bound in a 3" ring binder; (13) Final list of subcontractor (AIA Documents G705); (14) The documentation required under Sections 10.5, 10.6, and 10.7 of these General Conditions; and (15) Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. If the Contractor has satisfied the requirements herein and if the Owner is satisfied that the Work has been fully performed in accordance with the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum, including any retainage, shall be paid by the Owner to the Contractor thirty-one (31) days after Final Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion.

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§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.~~for any Claims then pending that comply with the requirements of Article 15.

§ 9.11 LIQUIDATED DAMAGES

§ 9.11.1 Failure of the Contractor to complete the Project within the Contract Time will result in damages being sustained by the Owner. Such direct damages are, and will continue to be, impracticable and extremely difficult to determine. Should Contractor fail to achieve Substantial Completion of the Project within the date established for Substantial Completion of the Project and/or Final Completion, Contractor and the surety shall be liable for and shall pay, as liquidated damages, the sum set forth in the Agreement (Section 4.5 of AIA A101-2017) for each calendar day of delay, after any authorized time extensions. From the compensation otherwise to be paid to the Contractor, the Owner may retain a sum sufficient to cover liquidated damages which may include, but may not be limited to, consultant fees, supervision, supplementation of forces by the Owner, loss of use, and loss of revenue for each calendar day that the Work remains uncompleted, which sum when presented by the Owner is agreed upon as the proper measure the Owner will sustain per day upon the failure of the Contractor to substantially complete the Work in the time stipulated. Execution of the Contract under these specifications shall constitute agreement by Owner and Contractor that the amounts stated in this paragraph are the minimum value of the costs and damages caused by failure of Contractor to substantially and/or finally complete the Work within the allotted times, that such sums shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs; except that if the liquidated damages exceed the amount owed to the Contractor under the Contract, then the Contractor or its surety shall pay any additional damages due. Notwithstanding the foregoing, Owner reserves the right to enforce and/or seek all other remedies and damages available in law or equity for Contractor's failure to perform any its other obligations, any other acts or omissions of Contractor, or any other breach or default of Contractor under the Contract.

§ 9.11.2 Owner and Contractor agree that late completion of the Work and/or delay of the Work due to defective or non-conforming Work will result in Owner being damaged in an amount estimated to be the liquidated damages amount to cover such damages to include, but not limited to, the following:

.1 for rental expenses and other costs for temporary buildings or alternative space obtained by the Owner due to loss of use of the Work or any part of the Work;

.2 additional professional services (e.g. architectural, engineering, administrative, and legal) and inspection costs;

.3 energy costs by continued use of less energy efficient facilities by Owner;

.4 storage costs by reason of Owner having to store materials not ready for display, storage, or use in new facility; and

.5 transportation and labor costs by having to handle materials twice because new facility was not ready for display, storage, or use upon original arrival.

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~~**§ 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.~~

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.1.2 Contractor's employees, agents, and Subcontractors and Sub-subcontractors shall not perform any service under this Contract while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug and alcohol free workplace while performing the Work. Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this Contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in any alcohol or drug test.

§ 10.1.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project Site, whether or not the owner thereof has a permit for a concealed weapon.

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

...

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

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

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~~**§ 10.2.8 Injury or Damage to Person or Property**~~

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be~~

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~~given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

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

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

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

§ 10.3.1 Notwithstanding anything in the Contract Documents to the contrary, Owner shall not be responsible for any Hazardous Materials or Substances used, stored, or otherwise introduced to the Premises by the Contractor or Contractor's employees, contractors, subcontractors, or other person over whom Contractor has responsibility or control under this Contract. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous ~~materials or substances.~~ 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 ~~notify~~ report the condition to the Owner and Architect ~~of the condition.~~ in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall ~~obtain~~ obtain, as reasonable, the services of a licensed laboratory to verify the presence of or absence of the hazardous material or substance reported by the Contractor to be present and, in the event such hazardous material or substance is found to be present, ~~to~~ cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an 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 Owner shall provide a copy of the report from the person performing the tests under this Section 10.3.2 to Contractor. In the event of delay in the Construction Schedule caused by the testing required hereunder, the Contract Time shall be extended by a Change Order, for the number of days that the Project was suspended for the testing and any remediation. To the extent that the Cost of the Work is increased for Contractor's additional costs for shut down and remobilization caused by the testing and possible remediation hereunder, the Contract Sum shall be increased by ~~the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~ Change Order for the actual and verifiable increase to the Contract Sum.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~ Intentionally deleted.

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

§ 10.3.5 The Contractor shall ~~reimburse~~ indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of ~~hazardous materials or substances~~ 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,~~ Section 10.3.1, except to the extent that the cost and expense are solely due to the Owner's fault or negligence.
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~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~

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

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

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

§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM
§ 10.6.1 Intentionally deleted.
§ 10.7 HAZARDOUS MATERIALS CERTIFICATION
§ 10.7.1 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification to Owner prior to Final Payment.

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§ 11.1.1 The Contractor ~~shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~and Contractor's Subcontractors shall purchase and maintain, in a company or companies licensed and admitted by the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas, the types and amounts of insurance as set forth in Exhibit A of the Agreement to protect it and the Owner from claims that may arise out of, or result from, the Contractor's operations under the Contract, whether such operations be by itself, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them

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may be liable. All insurance companies shall have an "A-VIII" in Best's Rating Guide and shall be satisfactory to the Owner. Insurance to be provided under the Contract include the requirement that private entities performing work at the Site, and exempt from the coverage on account of number of employees or occupation, shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project. No Work will be commenced until all requirements of this Article have been approved by the Owner in writing. The Owner will be furnished an acceptable certificate of insurance, prior to the commencement of any Work.

§ 11.1.2 The ~~Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in Exhibit A of the Agreement. Coverages written on an occurrence basis shall be maintained without interruption from date of commencement of the Work until date of Final Payment and termination of any coverage required to be maintained after Final Payment. The coverage afforded under the general liability insurance shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

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

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ ~~Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~The Contractor's insurance coverage shall be primary insurance as respects the Owner, its officers and employees for damages caused by Contractor or any one Contractor is liable for. Any assurance of self-insurance maintained by the Owner, its officers, employees shall be in excess of Contractor's insurance and shall not contribute to it for damages caused by Contractor or any one Contractor is liable for. Policies shall be written on an occurrence basis.

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

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

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

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

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commencement of the Work. The certificate from each Subcontractor must be received by Owner prior to each Subcontractor being allowed to work on the Project.

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of ~~liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ liability as it elects.
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§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, ~~agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors,~~ agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, ~~agents,~~ agents and employees, for damages caused by ~~fire,~~ fire or other causes of ~~loss,~~ loss to the extent ~~those losses are~~ covered by property insurance ~~required by the Agreement~~ obtained pursuant to this Section 11.3 or other property insurance applicable to the ~~Project,~~ Work, except such rights as they have to proceeds of such ~~insurance.~~ insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require ~~similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This~~ of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity ~~(1)~~ even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, ~~(2) even though that person or entity~~ did not pay the insurance premium directly or indirectly, ~~or (3)~~ and whether or not the person or entity had an insurable interest ~~in the damaged property.~~in the property damaged. Notwithstanding any provision to the contrary, the waiver of subrogation rights under the property insurance coverage in favor of the Architect, Architect's consultants, separate contractors described in Article 6 of the General Conditions of the Contract, if any, and any of the subcontractors, agents and employees shall be limited to such parties' site activities only, and shall not include any professional liability related to errors or omissions in their design or engineering services.

~~**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.3.2 Until the Work is substantially completed and accepted by the Owner, the Contractor shall purchase and maintain property insurance upon the entire Work at the Site to the full insurable value thereof. The property insurance shall also cover portions of the Work stored off Site after written approval of the Owner of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage including flood and earthquake and shall include all risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. This all risk policy shall be written Incorporating Texas Form No. 21 (Actual Completed Value Form) and Form No. 77 (General Change Endorsement) Incorporating the following language:

> Permission is given for the Project Insurance hereunder to become occupied, the insurance remaining in full force and effect until such time as the Project has been accepted by the Owner, all as currently approved by the Texas Board of Insurance Commissioners.

The policy shall include coverage for Explosion, Collapse and Underground (ECU). Such insurance shall be evidenced by the kind of policy that does not have to be adjusted or reported upon periodically, but provides constant insurance at full one hundred percent (100%) of all insurable values as they are created during construction by

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performance of the Contract. The Certificate of Insurance must include the names of the Insured Contractor and the Board of Trustees of the Owner.

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§ 11.5.1 A loss insured under the Owner's property insurance ~~required by the Agreement~~ shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The ~~Owner shall pay the Architect and Contractor~~ Contractor shall pay Subcontractors their just shares of insurance proceeds received by the ~~Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors~~ Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.5.2 ~~Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within 10 business days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.6 PERFORMANCE BOND AND PAYMENT BOND

§ 11.6.1 The Owner requires the Contractor to furnish payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract in a total amount equal to 100% of the Contract Sum and in conformity with applicable law. All bonds shall be issued by a surety company licensed, listed, and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for the Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurers capital and surplus.

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

§ 11.6.3 The Contractor shall deliver the required Bonds to the Owner not later than the date of the preconstruction meeting if the Contract has been executed by Owner. All Bonds will be reviewed by the Owner for compliance with the Contract Documents prior to the execution of the Contract.

§ 11.6.4 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.

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§ 11.6.5 Bonds shall guarantee the faithful performance of all the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent resident in the State of Texas and date of bond shall be the date of execution of the Contract. If at any time during the continuance of the Contract, the surety of the Contractor's bonds becomes insufficient, the Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. In default thereof, all payment or money due to the Contractor may be withheld until Contractor provides additional surety.

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

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.5 Nothing contained in this ~~Section 12.2~~ Section 12.2 shall be construed to establish a period of ~~limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.~~limitations with respect to any obligations that the Contractor might have under the Contract Documents. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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

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

§ 12.2.8 If, the Owner and Contractor deem it inexpedient to require the correction of Work that is defective, damaged, or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made

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by agreement between Contractor and Owner. Until such settlement, Owner may withhold such reasonable sums, if any, due Contractor pursuant to this Agreement as Owner deems just and reasonable. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

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

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~~The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~This Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas without regard to its conflicts of law provision, and any disputes shall be resolved in a court of competent jurisdiction located in Travis County, Texas.

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§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, ~~assigns, and legal representatives to covenants, agreements,~~ assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.~~The Contractor shall not assign the Contract as a whole, or in part, without written consent of the Owner."

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due ~~at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~in accordance with Section 2251.025 of the Texas Government Code. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 EQUAL OPPORTUNITY

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

.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or age; and

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

§ 13.7 CONTRACTOR ACCOUNTS, RECORDS AND INSPECTION

§ 13.7.1 At all times during the duration of the Project and for three years after the Final Completion of the Project, the Contractor shall maintain records, which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, and similar document); original estimates; estimating work sheets; correspondence, back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned; insurance rebates and dividends; job records, such as daily reports, diaries, and job

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meeting minutes applicable to the Project; payment and payroll records; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to any matters related to the Contract (including interviews with Contractor's personnel and Subcontractor's personnel). Payment and payroll records shall not be maintained at the Site.

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

§ 13.8 CERTIFICATE OF NONSEGREGATED FACILITY

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

§ 13.8.2 By the signing of this Contract, the Contractor signifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The undersigned agrees that a violation of this certification constitutes a breach of this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, Work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except where it obtained identical certifications from proposed consultants for specific time period) it will obtain identical certifications from proposed Subcontractors prior to the award of a contract exceeding $10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods): Notice to Prospective Subcontractors of requirement for certification of nonsegregated facilities. A certification of nonsegregated facilities, as required by the May 19, 1967 Order (32 FR 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

§ 13.9 PREVAILING WAGE RATES

§ 13.11.1 In compliance with laws of the State of Texas relating to labor (Acts 1933, 43 Leg. P. 91 Chapter 45) the building construction wage rates listed in the Contract Documents have been ascertained and determined by the Owner as the general prevailing rates in the locality of the Owner for the classifications listed. The Contractor and each Subcontractor shall pay to all laborers, workers, and mechanics employed by them in the execution of this Contract not less than such rates for each craft or type of workers or mechanic needed to execute the Contract. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the rates shown hereinafter.

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

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

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§ 14.1.1 ~~The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:~~

~~**.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~Contractor may terminate the Contract for the following reasons:

.1 The Work has been stopped for thirty (30) consecutive days because of court order, of act by any government authority having jurisdiction over the Work, or by order of Owner in accordance with the Contract Documents, provided that such stoppages are not due in whole or part to the acts or omissions of the Contractor, or any employee, consultants, Subcontractors, Sub-subcontractors, or any other person for whose acts or omissions the Contractor may be responsible;

.2 Owner's failure to provide Contractor with any information, permits, or approvals that are Owner's responsibility under the Contract Documents that result in the Work being stopped for thirty (30) consecutive days even though Owner has not ordered Contractor in writing to stop and suspend the Work in accordance with the Contract documents;

~~**.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;~~

~~**.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~

~~**.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Owner's failure to cure the problem as set forth in the Contract Documents after Contractor has stopped the Work; or

.4 Owner has not made payment of undisputed sums due on an approved Application for Payment within the time to cure provided in the Contract.

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~Upon the occurrence of an event set forth in 14.1.1 above, Contractor may provide written notice to Owner that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within a reasonable period of time after Owner's receipt of such notice. If Owner fails to cure, or fails to reasonably commence to cure, such problem, then Contractor may give a second written notice to Owner of its intent to terminate. If Owner fails to cure, or reasonably commences to cure, such problem within a reasonable period of time after such notice, then Contractor may declare the Contract terminated for default by providing written notice to Owner of such declaration. In such case, Contractor shall be entitled to recover from the Owner payment not yet made for Work actually and satisfactorily completed and accepted by Owner up to the point of termination and for actual proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery purchased or rented prior to the time the event in Section 14.1.1 occurred upon payment by Owner of amounts paid for materials, equipment, tools and machinery under this Section 14.1.2, all title and rights to such items to transfer to Owner.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an amount that would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of ~~60~~ 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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§ 14.2.1 ~~The Owner may terminate the Contract if the Contractor~~

~~.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;~~

~~.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;~~

~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~

~~.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.~~Owner may terminate the Contract for cause for Contractor's material breach of any provision of the Contract upon written notice to the Contractor specifying the provisions so breached. After receiving written notice of breach, Contractor shall have ten (10) days to cure the breach. If the Contractor fails to cure or reasonably commences to cure the breach within the time period so prescribed, the Owner may declare the Contract terminated and may enter upon the premises and may take possession of all materials, appliances, and other items that have been purchased or provided by payments to the Contractor for the performance of the Work and may complete the Work. All such materials, appliances, and other items purchased by the Contractor as set forth herein hereby transfers, assigns, and sets over to Owner for all purposes only to the extent of receipt of payment from the Owner for such items.

§ 14.2.2 ~~When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, 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' 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.~~In the event of termination under Section 14.2, except for payment for Work satisfactorily performed in accordance with the Contract up to the date of termination, Contractor shall not be entitled to receive any further payments under the Contract. In addition to termination and any other remedies for breach or default that are provided under this Contract, including this Section 14.2, the Owner may pursue any other rights or remedies available to the Owner in equity or at law.

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

§ 14.2.4 ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~Intentionally deleted.

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

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§ 14.3.2 The Contract Sum and Contract Time ~~shall~~ may be adjusted for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1.~~ delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include the cost associated with the termination of the contract including all labor, equipment and materials and the balance of the Contractor's fee supervisory labor and reasonable profit. No adjustment shall be made to the ~~extent~~extent:

.1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted,~~ was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

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

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

...

.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.~~orders related to the Project.

§ 14.4.3 In case of ~~such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~termination for the Owner's convenience, the Contractor shall be entitled to retain all sums of money theretofore paid to it under the Contract and shall be paid (a) any retainage with respect to Work performed; and (b) that portion of the Contract Sum for Work satisfactorily performed to the date of termination for which it has not yet received payment less any amounts that comprise that portion of the Contract Sum that are included in clause (a) of this Section 14.4.3. Contractor shall further be entitled to overhead costs incurred and demonstrated directly arising out of early termination.

§ 14.5 BANKRUPTCY OF CONTRACTOR

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

.1 The Contractor, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Contractor to perform all future material obligations under the Contract, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Contractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Contract within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

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

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~~§ 15.1.2 Time Limits on Claims~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

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§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by either the Owner or ~~Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker~~ Contractor must be initiated by written notice to the other party with a copy sent to the ~~Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.~~In such event, no decision by the Initial Decision Maker is required.~~

...

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

§ 15.1.4.2 ~~The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~Intentionally deleted.

...

~~If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~
Intentionally deleted.
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§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

Architect with no recommendation having been rendered by the Architect.**§ 15.2.2** The Architect 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) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest. ~~**§ 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, (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~~

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~~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.~~

Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.**§ 15.2.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished. ~~**§ 15.2.4** 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 the 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 binding dispute resolution.~~

Intentionally deleted**§ 15.2.6** Intentionally deleted.**§ 15.2.6.1** Intentionally 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.

~~§ 15.2.6~~ ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~§ 15.2.6.1~~ ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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

§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections ~~9.10.4, 9.10.5, and 15.1.7,~~ 9.10.4 and 9.10.5, shall be subject to mediation as a condition precedent to ~~binding dispute resolution.~~litigation.

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

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

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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

§ 15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

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§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

ARTICLE 16 BUSINESS ETHICS

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

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

17.2 Contractor verified 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

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Comptroller's list such omission or misrepresentation will void this Agreement.

17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

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This Agreement is entered into as of the final day both parties have signed below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**LIBERTY CIVIL CONSTRUCTION, LLC**
By:	**By:**
Signature	**Signature**
Steve Flores, Interim Superintendent *(Printed name and title)*	Michael Ehrhardt, Managing Partner/President *(Printed name and title)*
Date:	Date:

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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Certification of Document's Authenticity

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I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:29:13 ET on 05/13/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Attorney for Lake Travis ISD

(Title)

05/13/2025

(Dated)

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Construction Agreements between Lake Travis ISD and White Construction for Lake Travis High School Cavalier Stadium and Women's Field House Renovation

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approve and execute the construction agreements between Lake Travis ISD and White Construction for Lake Travis High School Cavalier Stadium and Women's Field House Renovation.

RATIONALE
In September 2024, the Board approved White Construction as the Construction Manager at Risk for the construction of the Cavalier Stadium renovation and Women's Field House addition project. The administration is seeking approval to execute the agreements with White Construction.

The parties are continuing to work to develop a Guaranteed Maximum Price for project. The administration will bring the GMP back to the Board for approval once finalized.

BUDGET PROVISIONS
2024 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
White Construction CMR23-18 A133-2019
White Construction CMR23-18 A201-2017

MEETING DATE
May 21, 2025

AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

and the Construction Manager:
(Name, legal status, address, and other information)

White Construction
2705 Bee Cave Road, Suite 250
Austin, TX 78746
512-583-9224

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

LTHS Cavalier Stadium Renovations and Women's Field House Renovations and Additions Projects

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

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™–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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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Request for Proposal Bid #24-011; see also Exhibit A, GMP Amendment

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Renovation of the Lake Travis High School stadium including demolition, utilities, bleacher seating, pressbox, women's fieldhouse, and parking.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

Approximate Construction Budget – TBD

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any: TBD in GMP Amendment

.2 Construction commencement date: TBD in GMP Amendment

.3 Substantial Completion date or dates: TBD in GMP Amendment

.4 Other milestone dates: TBD in GMP Amendment

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

(Paragraph deleted)
§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Request for Proposal Bid #24-011; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)
Architect

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Surveyor
Early Surveying

.2 AV
AI Vickers

.3 Geotechnical
Raba Kistner

The Architect shall retain the following consultants:

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.1 Civil Engineering
Malone Wheeler

.7 Landscape Architect

(Paragraphs deleted)
Blue Fish Collaborative

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Cody Holt
Bo Ledoux
Claycomb & Associates Architects
5113 Southwest Pkwy, Suite 100
Austin, TX 78735
Telephone: 512-263-7940

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Mike Beaty
White Construction
2705 Bee Cave Rd., Suite 250
Austin, TX 78746
512-583-9224
mikeb@whiteconst.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

§ 1.1.15 Other Initial Information on which this Agreement is based:

See Request for Proposal Bid #24-011; see also Exhibit A, GMP Amendment

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal

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signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Superintendent of Schools.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

(Paragraphs deleted)

§ 2.3.2 Per Texas Government Code, §2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with the terms herein.

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§ 2.3.3 For the Construction Phase, the general conditions of the contract shall be set forth in A201-2017, as amended by the parties, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by, that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only

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with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 3.1.6.3 If the Architect is providing cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

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§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval, which may consist of a verification that all specified requirements will be met.

§ 3.1.11.2 The Construction Manager shall develop bidders ' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: the Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.1.11.6 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;
.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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§ 3.1.11.7 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.1.11.8 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in this Agreement.

§ 3.1.11.9 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

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.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes from which Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase, as provided in Section 8.1.2 of A201-2017.
(Paragraphs deleted)
§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration
§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection, subject to the provisions of the Public Information Act. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

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.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

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(Paragraph deleted)
§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

§ 4.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative
Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

§ 4.3 Architect
The Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

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§ 4.4 Inspection and Testing
Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Paragraphs deleted)
Lump Sum of Fifty Thousand ($50,000).
§ 5.1.2
(Paragraphs deleted)
Intentionally deleted.
(Table deleted)
§ 5.1.2.1 Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
(Paragraphs deleted)

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date sh
(Paragraph deleted)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee, the total of which shall not exceed the Guaranteed Maximum Price. All savings under the Guaranteed Maximum Price shall accrue to Owner.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

3.25 %

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Only by agreement of Owner's Board of Trustees.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

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(Paragraphs deleted)

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. 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 the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 6.1.6 Other:

(*Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.*)

N/A

(Paragraph deleted)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment(s), subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Contraction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

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(Paragraphs deleted)

§ 6.3 Changes in the Work

(Paragraph deleted)

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

(Paragraph deleted)

§ 6.3.1.1 Intentionally deleted

.**§ 6.3.2** Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended by the parties.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

(Paragraph deleted)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

(Paragraphs deleted)

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

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§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time attributable to and required for the Work and only as approved by Owner.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Intentionally deleted.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 7.6 Miscellaneous Costs

(Paragraphs deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

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Rates will be as follows: Builders Risk – 0.28% of the Cost of the Work; General Liability – 1.3% of the Cost of Work; SDI – 1.3% of the Cost of Work

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid for by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 Intentionally deleted.

(Paragraphs deleted)
§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges

§ 7.6.8 Deposits for lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, that are directly attributable to and required for the Work and are approved by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, as amended.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

§ 7.8 Related Party Transactions
§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in

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which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Intentionally deleted;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for services incurred during the Preconstruction Phase;
- **.10** Delay damages or claims; and
- **.11** Construction Manager's Fee in Section 6.1.2

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner.. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

(Paragraph deleted)

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the

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Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

(Paragraphs deleted)
§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

> "By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not

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receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's

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subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect, and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) classification on the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- **.1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;
- **.2** That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- **.4** The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 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 A201–2017;
- **.3** Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

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.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 A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation;

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

.2 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 due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other 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 (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§ **11.1.7.4** In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

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§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.2 Final Payment

§ 11.2.1 Final payment, for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

- **.1** the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- **.3** a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable;
- **.4** The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and
- **.5** Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

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§ 11.2.2 Within 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. In the event that the Owner chooses to conduct an audit, the auditor shall be mutually agreed upon.

(Paragraphs deleted)
§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

.6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

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.9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2 Intentionally deleted.

*(Paragraphs deleted)***§ 12.1.3** When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Intentionally deleted.

[**X**] Litigation in a court of competent jurisdiction

(Paragraphs deleted)

If the Owner and Construction Manager 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 with proper venue being the county where the Project site is located.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 .If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager 's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

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§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

(Paragraphs deleted)

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such

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steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(*Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.*)

N/A

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price, if established, and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted. T

§ 14.3 Insurance and Bonds

§ 14.3.1

The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

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§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

(Paragraphs deleted)
§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance.I In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

(Paragraph deleted)
§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

(Paragraph deleted)
§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

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

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

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

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

(Paragraph deleted)
§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

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.2 No later than seven days after receipt by the Construction Manager, 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.

(Paragraph deleted)

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

(Paragraphs deleted)

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

§ 14.3.1.5.1.11 The Construction Manager shall post on each Project site a notice, in the text form and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

.1 A certificate of coverage, prior to the other person beginning work on the Project; and

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

.7 Contractually require each person with whom it contracts to perform as required by items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

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§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Construction Manager shall demonstrate to the Owner satisfactory coverage and limits for General Liability and Excess insurance or Owner may require Construction Manager to provide an Owner and Contractors Protective Liability Insurance naming the Owner, Superintendent and Board of Trustees as Additional insured with the following limits:

.1 $1,000,000 each occurrence;

.2 $1,000,000 aggregate as primary limits, irrespective of whether occurrence consists of bodily injury, death, property damage or combination thereof.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

1. 5% Value at Risk at Time of Loss (minimum 250K) – Flood
2. $25,000 Earth Movement
3. $25,000 named Storms
4. 1% Value at Risk at Time of Loss (minimum 50K) – Severe Convective Storm – Hail
5. 2% Value at Risk at Time of Loss (minimum 100K) – Severe Convective Storm – Tornado
6. $100,000 Water Damage
7. $25,000 All Other Perils

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

(Paragraphs deleted)
(Table deleted)
§ 14.5 Other provisions:

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§ 14.5.1 Criminal History Checks
Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 14.5.6 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.7 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 have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.8 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."

§ 14.5.9 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under 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.

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§ 14.5.10 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. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 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.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

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

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

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

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§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 14.5.22 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the

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District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended

.2 Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended

.5

(Paragraphs deleted)

Exhibit B – Prevailing Wage Rate

(Paragraphs deleted)

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**WHITE CONSTRUCTION**
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Steve Flores, Superintendent *(Printed name and title)*	*(Printed name and title)*

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AIA® Document A133® – 2019

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Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

White Construction
2705 Bee Cave Road, Suite 250
Austin, TX 78746
512-583-9224

...

LTHS Cavalier Stadium Renovations and Women's Field House Renovations and Additions Projects

...

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

PAGE 2

EXHIBIT B ~~INSURANCE AND BONDS~~**PREVAILING WAGE RATES**

...

See Request for Proposal Bid #24-011; see also Exhibit A, GMP Amendment

...

Renovation of the Lake Travis High School stadium including demolition, utilities, bleacher seating, pressbox, women's fieldhouse, and parking.

...

~~(Provide total and, if known, a line item breakdown.)~~
Approximate Construction Budget – TBD

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.1 Design phase milestone dates, if any: TBD in GMP Amendment

.2 Construction commencement date: TBD in GMP Amendment

.3 Substantial Completion date or dates: TBD in GMP Amendment

.4 Other milestone dates: TBD in GMP Amendment

...

N/A

~~**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

...

See Request for Proposal Bid #24-011; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following ~~representative~~ representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

...

Architect

...

.1 ~~Geotechnical Engineer:~~Surveyor
Early Surveying

.2 AV
AI Vickers

.3 Geotechnical
Raba Kistner

~~.2 Civil Engineer:~~

The Architect shall retain the following consultants:

.1 Civil Engineering

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Malone Wheeler

.7 Landscape Architect

~~.3 Other, if any:~~
~~*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*~~

Blue Fish Collaborative
PAGE 4

Cody Holt
Bo Ledoux
Claycomb & Associates Architects
5113 Southwest Pkwy, Suite 100
Austin, TX 78735
Telephone: 512-263-7940

...

Mike Beaty
White Construction
2705 Bee Cave Rd., Suite 250
Austin, TX 78746
512-583-9224
mikeb@whiteconst.com

...

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

...

See Request for Proposal Bid #24-011; see also Exhibit A, GMP Amendment

...

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price ~~Amendment~~ Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through,

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or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Superintendent of Schools.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

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The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the ~~Owner~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, ~~shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.~~ as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

~~**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.~~

~~**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**~~

~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

§ 2.3.2 Per Texas Government Code, §2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with the terms herein.

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§ 2.3.3 For the Construction Phase, the general conditions of the contract shall be set forth in A201-2017, as amended by the parties, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

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The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity ~~discovered by~~ discovered by, that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and ~~construction;~~ construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written~~ building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, ~~reliance, and exchange of digital data, including building information models for the Project.~~and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

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When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the ~~Architect's~~ Architect 's services, other Owner consultants' services, and the ~~Owner's~~ Owner 's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

...

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager ~~suggests~~ suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective ~~action.~~action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service,~~ services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

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§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and ~~approval.~~approval, which may consist of a verification that all specified requirements will be met.

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§ 3.1.11.2 The Construction Manager shall develop ~~bidders' interest in the Project.~~bidders ' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

...

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: the Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.1.11.6 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.1.11.7 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.1.11.8 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in this Agreement.

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§ 3.1.11.9 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

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the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's ~~Fee described in Section 6.1.2.~~Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.~~Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

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.2 ~~A .2~~A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 ~~A .3~~A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~

.5 ~~A date by which the Owner must accept the Guaranteed Maximum Price.~~The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will

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accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 ~~If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager.~~ The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~any taxes from which Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

...

§ 3.3.1.1 ~~For purposes of Section 8.1.2 of A201–2017, the~~ The date of commencement of the Work shall mean the date of commencement of the Construction ~~Phase.~~
Phase, as provided in Section 8.1.2 of A201-2017.

~~**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.~~

~~**§ 3.3.2 Administration**~~

~~**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.~~

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~~**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.~~

~~**§ 3.3.2.3 Monthly Report**~~
~~The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.~~

~~**§ 3.3.2.4 Daily Logs**~~
~~The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.~~

~~**§ 3.3.2.5 Cost Control**~~
~~The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.~~

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration
§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection, subject to the provisions of the Public Information Act. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

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.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

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§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria,

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including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems,~~ systems sustainability and site requirements.

~~**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager 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. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these ~~costs.~~ costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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furnish the following information or services with reasonable promptness. ~~The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of~~ Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law ~~and~~ or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys ~~describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~ as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

§ 4.1.4.3 ~~The Owner, when such services are requested,~~ Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner ~~shall~~ may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.

...

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~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

...

The ~~Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The~~ Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection and Testing
Owner shall provide the Construction Manager ~~with~~ a copy of the ~~scope of services in the executed~~ executed agreement between the Owner and the Architect, and any further modifications to ~~the Architect's scope of services in the agreement.~~the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.
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~~*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*~~

Lump Sum of Fifty Thousand ($50,000).
§ 5.1.2 ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~
~~*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*~~

Intentionally deleted.

~~Individual or Position~~	~~Rate~~

§ 5.1.2.1 ~~Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.~~Intentionally deleted.

...

~~§ 5.2 Payments~~
~~§ 5.2.1~~ ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.~~

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§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date sh

~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~% %~~

...

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's ~~Fee.~~Fee, the total of which shall not exceed the Guaranteed Maximum Price. All savings under the Guaranteed Maximum Price shall accrue to Owner.

...

3.25 %

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

...

Only by agreement of Owner's Board of Trustees.

...

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

~~**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rental rate paid at the place of the Project.~~

~~**§ 6.1.6** Liquidated damages, if any:~~
~~*(Insert terms and conditions for liquidated damages, if any.)*~~

~~**§ 6.1.7** Other:~~
~~*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*~~

~~**§ 6.2 Guaranteed Maximum Price**~~

~~The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as~~

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~~provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.~~

~~**§ 6.3 Changes in the Work**~~

~~**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

~~**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.~~

~~**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.~~

~~**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. 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 the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner

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may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

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

N/A

~~**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.~~

§ 6.2 Guaranteed Maximum Price
The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment(s), subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Contraction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

~~**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

~~**ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**~~
~~**§ 7.1 Costs to Be Reimbursed**~~
§ 6.3 Changes in the Work
~~**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.~~

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

~~**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.~~

§ 6.3.1.1 Intentionally deleted

§ 6.3.2 Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended by the parties.
§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term

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"costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

~~**§ 7.2 Labor Costs**~~

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior ~~approval, at off-site workshops.~~written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

~~**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.~~

~~**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:~~
~~*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*~~

~~**§ 7.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

~~**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

~~**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

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§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the
site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time attributable to and required for the Work and only as approved by Owner.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories,
workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and~~ subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.
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§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

...

§ 7.5.2 ~~Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.~~Intentionally deleted.

...

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.

...

~~**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

~~**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

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~~**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

~~**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.~~

~~**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

~~**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

Rates will be as follows: Builders Risk – 0.28% of the Cost of the Work; General Liability – 1.3% of the Cost of Work; SDI – 1.3% of the Cost of Work

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid for by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Intentionally deleted.

~~**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.~~

~~**§ 7.6.7** Costs of document reproductions and delivery charges.~~

~~**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

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~~**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

~~**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located
at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges

§ 7.6.8 Deposits for lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7.1 Other costs incurred in the performance of the Work, ~~with the Owner's prior approval.~~that are directly attributable to and required for the Work and are approved by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document ~~A201–2017.~~A201–2017, as amended.
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Manager to pay such costs, unless such costs are excluded by the provisions of Section ~~7.9.~~7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.
PAGE 19

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the ~~Owner~~ Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

...

.2 ~~Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~Intentionally deleted;

...

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.6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

...

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.9 Costs for services incurred during the Preconstruction ~~Phase.~~Phase;

.10 Delay damages or claims; and

.11 Construction Manager's Fee in Section 6.1.2

...

§ 8.1 ~~Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager.~~ Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner.. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

~~**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this ~~Agreement,~~ Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of ~~cost plus~~ cost-plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

~~**ARTICLE 10 ACCOUNTING RECORDS**~~

~~The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.~~

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

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§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

"By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete

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documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

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§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the __ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the __ day of the __ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than __ (__) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values~~ values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect may require. The schedule of values shall be~~ Architect, and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) ~~the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in~~ classification on the schedule of values.

...

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditors~~ auditors, accountants, or other representatives in such documentation; ~~and~~

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

.2 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 due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other 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 (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§ **11.1.7.4** In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of

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Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

...

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may 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.)~~due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

...

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:
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N/A

...

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the ~~Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to ~~Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In ~~taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the~~

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~~Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.~~submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

...

§ 11.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum,~~ for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the ~~Contract, except for~~ Contract including the Construction Manager's responsibility to correct ~~Work as provided in Article 12 of AIA Document A201–2017,~~ Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; and~~Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect ~~in accordance with Section 11.2.2.2.~~and approved by the Program Manager, if applicable;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within ~~30~~ 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit. In the event that the Owner chooses to conduct an audit, the auditor shall be mutually agreed upon.

~~**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.~~

~~**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~

~~**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

~~**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on~~

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~~the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~**§ 11.3 Interest**~~

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~—%~~

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the
Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article
9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

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.6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

.9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or
in the absence thereof, at the maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

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§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute ~~resolution, and Section 12.1.2 of this Agreement shall not apply.~~resolution.

§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~Intentionally deleted.

~~*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*~~

§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

...

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:

...

[ ] ~~Arbitration pursuant to Article 15 of AIA Document A201–2017~~Intentionally deleted.

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[**X**] Litigation in a court of competent jurisdiction

~~[ ] Other: *(Specify)*~~

If the Owner and Construction Manager 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.~~jurisdiction with proper venue being the county where the Project site is located.

...

§ 13.1
~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 ~~If~~ .If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction ~~Manager's~~ Manager 's compensation under this Section exceed the compensation set forth in ~~Section 5.1.~~Section 5.1.

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forth in ~~Section 5.1.~~Section 5.1.

...

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

...

~~**§ 13.2.2 Termination by the Owner for Cause**~~

~~**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:~~

~~.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;~~
~~.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
~~.3 Subtract the aggregate of previous payments made by the Owner; and~~
~~.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.~~

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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N/A

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum ~~Price~~ Price, if established, and Contract Time ~~shall~~ may be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

...

§ 14.1 ~~Terms~~ Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

...

legal representatives to covenants, agreements, and obligations contained in the Contract Documents. ~~Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

~~**§ 14.2.2** The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.~~This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted. T

§ 14.3 ~~Insurance and Bonds~~Insurance and Bonds
§ 14.3.1
The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for

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contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

~~**§ 14.3.1 Preconstruction Phase**~~

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance.I In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

~~**§ 14.3.1.1** Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.~~

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

~~**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

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

~~**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages~~

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~~required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

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

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

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

~~**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.~~

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

~~**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.~~

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

~~**§ 14.3.1.6 Other Insurance**~~

~~*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*~~

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

§ 14.3.1.5.1.11 The Construction Manager shall post on each Project site a notice, in the text form and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

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.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

.1 A certificate of coverage, prior to the other person beginning work on the Project; and

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

.7 Contractually require each person with whom it contracts to perform as required by items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Construction Manager shall demonstrate to the Owner satisfactory coverage and limits for General Liability and Excess insurance or Owner may require Construction Manager to provide an Owner and Contractors Protective Liability Insurance naming the Owner, Superintendent and Board of Trustees as Additional insured with the following limits:

.1 $1,000,000 each occurrence;
.2 $1,000,000 aggregate as primary limits, irrespective of whether occurrence consists of bodily injury, death, property damage or combination thereof.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail,

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explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

1. 5% Value at Risk at Time of Loss (minimum 250K) – Flood
2. $25,000 Earth Movement
3. $25,000 named Storms
4. 1% Value at Risk at Time of Loss (minimum 50K) – Severe Convective Storm – Hail
5. 2% Value at Risk at Time of Loss (minimum 100K) – Severe Convective Storm – Tornado
6. $100,000 Water Damage
7. $25,000 All Other Perils

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

~~**Coverage** **Limits**~~

~~**§ 14.3.1.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

~~**§ 14.3.2 Construction Phase**~~
~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~

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~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

§ 14.5.1 Criminal History Checks

Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 14.5.6 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.7 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 have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.8 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

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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."

§ 14.5.9 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under 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.

§ 14.5.10 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. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 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.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

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

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

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined

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construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.
§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 14.5.22 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

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.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

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§ 15.1 This ~~Agreement~~ Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This ~~Agreement~~ Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents ~~comprise the Agreement:~~are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended

.2 ~~AIA Document A133™–2019,~~ Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 ~~AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, as amended

.5 ~~Building Information Modeling Exhibit, if completed:~~

.6 ~~Other Exhibits:~~
~~*(Check all boxes that apply.)*~~

~~[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~
~~*(Insert the date of the E234-2019 incorporated into this Agreement.)*~~

~~_____~~

~~[ ] Supplementary and other Conditions of the Contract:~~

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

Exhibit B – Prevailing Wage Rate

.7 ~~Other documents, if any, listed below:~~
~~*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids*~~

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~~*or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*~~

...

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **WHITE CONSTRUCTION**

...

Steve Flores, Superintendent

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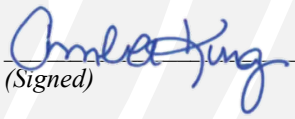
Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:36:15 ET on 03/19/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

03/19/2025

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

LTHS Cavalier Stadium Renovations and Women's Field House Renovations and Additions Projects

THE OWNER:
(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

THE ARCHITECT:
(Name, legal status and address)

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

THE CONTRACTOR:

White Construction
2705 Bee Cave Road, Suite 250
Austin, TX 78746
512-583-9224

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including 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. Unless specifically enumerated in the Agreement, 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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

§ 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. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

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

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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

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

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

(Paragraphs deleted)
§ 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
Intentionally deleted. .

§ **1.1.9** The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

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

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

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

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

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enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

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

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- **.1** Contract Modifications signed by Contractor and Owner.
- **.2** Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- **.3** Agreement – AIA Document A133-2019, as modified by the Owner for the Project
- **.4** General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- **.5** Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

§ 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 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor,

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Subcontractors, Sub-subcontractors, and 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 the Project is not to be construed as publication in derogation of the any reserved rights

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed $100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

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2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Intentionally deleted.

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations 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.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with

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the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- **.1** The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.
- **.2** The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for 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,

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the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.
3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

§ 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 bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

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

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

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

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

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

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§ 3.4 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. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

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

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

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 Intentionally deleted.

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

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

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§ 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. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 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 shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.8 Warranties shall become effective on a date established by the 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, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

§ 3.6 Taxes

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

(Paragraphs deleted)

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

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

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this 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 the construction process which require the issuance of a permit shall be at Contractor's sole cost.

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3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

- **.1** The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.
- **.2** Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.
- **.3** The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 The Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

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§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect..

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

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

§ 3.10.3 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the performance of the Work has not progressed or reached the level of completion required by the Contract Documents and project schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until

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the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

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

3.11.1 Contractor shall make available, at the Project site, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the 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

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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.

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 3.13 Use of Site

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

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unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.14 Cutting and Patching

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

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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

§ 3.15.3 The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with 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 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT

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CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER AND OWNER'S CONSULTANTS, , WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER AND OWNER'S CONSULTANTS, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, AND CONTRACTOR ARE ALL PARTIES.

§ 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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

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.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 ANTITRUST VIOLATION

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Intentionally deleted.

§ 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 Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts

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or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 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 or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

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

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

§ 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 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 at no additional expense to the Owner.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

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§ 5.3 Subcontractual Relations

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

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

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

§ 5.4 Contingent Assignment of Subcontracts

(Paragraphs deleted)

§ 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights 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 may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. Upon written approval by Owner and

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Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual 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 notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

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

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

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

§ 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 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.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10 of the cost (0% for change orders to be paid out of any contingency allowance).

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.2 For the Contractor, for the Work performed by the Contractor's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.

.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2 Change Orders

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

.1 The change in the Work;

.2 The amount of the adjustment, if any, to the Contract Sum; and

.3 The extent of adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

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

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

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.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 applicable sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved 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.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus overhead and profit as set forth in Section 7.1.4. 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until all applicable building and site development permits have been issued..

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

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

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor. 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.

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.7 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours. The Owner shall not be liable for any such delays for a cumulative of 30 days. For Owner-caused delays greater than 30 days, Contractor may claim and be paid for damages including extended overhead.

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

§ 8.3.3 This Agreement does not permit recovery of damages for delay by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 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. All costs of

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overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

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

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect other data as reasonably requested by Owner or Architect.

§ 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 supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date

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or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The 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. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

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

- **.1** Defective Work not remedied;
- **.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 undisputed payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** Damage to the Owner or a Separate Contractor;
- **.6** Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- **.7** Repeated failure to carry out the Work in accordance with the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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

§ 9.6 Progress Payments

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

§ 9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 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 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 and suppliers 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 or supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

§ 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 and the Owner 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.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 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; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

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

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

§ 9.9 Partial Occupancy or Use

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

§ 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 expressly agreed upon in writing, 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 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

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

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

§ 9.10.4

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(Paragraphs deleted)
Intentionally deleted.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same. In the event that the Owner chooses to conduct an audit, the auditor shall be mutually agreed upon.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

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

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

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

.1 employees on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, 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 implement, 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 the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

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

§ 10.2.5 CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 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.

(Paragraphs deleted)

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or

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polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 Intentionally deleted.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

§ 11.1.3 Intentionally deleted.

§ 11.1.4 Intentionally deleted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally deleted.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Intentionally deleted.

(Paragraph deleted)

§ 11.3.2 Intentionally deleted.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Intentionally deleted.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

(Paragraph deleted)

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

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

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§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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

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

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

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

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

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

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

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

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

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

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

§ 13.3.2 No action or failure to act by the Owner, 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 thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written notice of when and where tests and

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inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

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

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

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) 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 reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents.

.4 Intentionally deleted.

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within thirty (30) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces,

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in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

.6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 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' 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.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

§ 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 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

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

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

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor seven (7) days notice.

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders related to the Project.

§ 14.4.3 In case of termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the Owner.

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

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Owner's decision, subject to the right of the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

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

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 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.

§ 15.1.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

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In the event of inclement weather, CMR has allocated an aggregate of 10 days in the project schedule. CMR shall notify Owner of each day qualifying as an inclement weather day according to the following criteria:

a. Rain in excess of /10th of an inch which impacts critical path
b. Wind in excess of 25 MPH which impacts the critical path
c. Temperatures of 38 degrees or less or 100 degrees or higher
d. Muddy conditions that inhibit access to the site or cause work related tasks to be unsafe
e. Lightning within a 15 mile proximity to the site which impacts the critical path

(Paragraphs deleted)

§ 15.1.7 Calculating Claims for Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for losses of income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

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

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

§ 15.2.6 Intentionally deleted. .

§ 15.2.6.1 Intentionally 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 Waiver of Lien

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It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 15.3 Mediation

§ 15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration

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

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. 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.

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§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

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

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

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.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**WHITE CONSTRUCTION**
By:	**By:**
Signature	**Signature**
Steve Flores, Interim Superintendent	
(Printed name and title)	*(Printed name and title)*
Date:	Date:

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Additions and Deletions Report for

AIA® Document A201® – 2017

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LTHS Cavalier Stadium Renovations and Women's Field House Renovations and Additions Projects

...

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

...

(Name, legal status and address)

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

THE CONTRACTOR:

White Construction
2705 Bee Cave Road, Suite 250
Austin, TX 78746
512-583-9224

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16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including 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.

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Unless specifically enumerated in the Agreement, 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 or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

...

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~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

...

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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~~§ 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.~~

§ 1.1.7 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

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professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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

§ **1.1.9** The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

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

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

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

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.
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§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

§ 1.2.4 Precedence of the Contract Documents
The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
.3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project
.4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
.5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

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Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

...

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

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The parties shall agree upon ~~written~~ protocols governing the transmission and use ~~of, and reliance on,~~ of Instruments of Service or any other information or documentation in digital form.

~~**§ 1.8 Building Information Models Use and Reliance**~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.8 Building Information Models Use and Reliance

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

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The ~~Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1,~~ Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized

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representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed $100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~
Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner ~~shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

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§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

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

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

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

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§ 2.3.5 ~~The Owner shall furnish information~~ Information or services required of the Owner by the Contract Documents ~~with reasonable promptness. The Owner shall also furnish any other information or services under the~~

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~~Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

...

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, 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.~~**§ 2.4.1** If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~**§ 2.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable 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. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 3.1.2 The Contractor shall perform the Work in ~~accordance with the Contract Documents.~~a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4,~~ Section 2.3.4, 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

...

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

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

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3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.
3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.
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3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

...

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

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

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

3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses

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among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

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

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

§ 3.4.1 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. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

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

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

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 ~~Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.~~Intentionally deleted.

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

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

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conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

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§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 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 shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 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 the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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§ 3.5.8 Warranties shall become effective on a date established by the 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, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

~~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.~~**§ 3.6.1** The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7.2 ~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

~~§ 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 14 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 that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence

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of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

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

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this 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 the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

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.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, ~~profit,~~ 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~~ Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

...

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

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§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 The ~~Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.~~Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a ~~Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect..

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

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.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

...

§ 3.10.3 ~~The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the performance of the Work has not progressed or reached the level of completion required by the Contract Documents and project schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

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3.11.1 Contractor shall make available, at the Project site, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy~~ not be responsible for the adequacy of the performance and design criteria ~~provided~~ specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this ~~Section 3.12.10,~~ Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the ~~Contract.~~ Contract and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. 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.~~materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

...

§ 3.15.3 The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

...

§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or~~

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~~obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER AND OWNER'S CONSULTANTS, , WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER AND OWNER'S CONSULTANTS, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 ~~In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

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3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 ANTITRUST VIOLATION

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

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§ 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.~~Intentionally deleted.

...

§ 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.~~ Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

...

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§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.
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The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the ~~Project. Communications~~ Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

...

§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.
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§ 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.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 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.~~information at no additional expense to the Owner.

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

...

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

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§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

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

~~**§ 5.4.1** Each subcontract agreement for a 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; 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 assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

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§ 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights 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 may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension.

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

...

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

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. ~~The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.~~

...

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10 of the cost (0% for change orders to be paid out of any contingency allowance).

.2 For the Contractor, for the Work performed by the Contractor's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.

.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

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

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

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

...

.4 As provided in ~~Section 7.3.4.~~Section 7.3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in ~~the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ Section 7.1.4. In such case, and also under ~~Section 7.3.3.3,~~ Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this ~~Section 7.3.4~~ Section 7.3.4 shall be limited to the following:

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.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the ~~change.~~change only if the adjustment causes an extension of the Contract Time.

...

§ 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.~~ plus overhead and profit as set forth in Section 7.1.4. 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.

...

§ 8.1.2 The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until all applicable building and site development permits have been issued..

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

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

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

...

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§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.7 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3.1 ~~If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours. The Owner shall not be liable for any such delays for a cumulative of 30 days. For Owner-caused delays greater than 30 days, Contractor may claim and be paid for damages including extended overhead.

...

§ 8.3.3 This ~~Section 8.3~~ Agreement does not ~~preclude~~ permit recovery of damages for delay by ~~either party under other provisions of the Contract Documents.~~the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

...

§ 9.1.1 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall

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submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under ~~Section 9.2,~~ Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect ~~retainage if provided for in the Contract Documents.~~other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in ~~Section 7.3.9,~~ 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.

...

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 ~~Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.~~Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that

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releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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

- **.1** ~~defective~~ Defective Work not remedied;
- **.2** ~~third~~ 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~~ Failure of the Contractor to make undisputed payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** ~~reasonable~~ Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** ~~damage~~ Damage to the Owner or a Separate Contractor;
- **.6** ~~reasonable~~ Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- **.7** ~~repeated~~ Repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

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

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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

§ 9.6.2 The Contractor ~~shall pay each Subcontractor, no later than seven days after~~ shall, within ten (10) days following 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.~~pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the

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performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

...

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

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended ~~use.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's

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additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

...

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

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

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

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under ~~Section 9.8.2.~~ 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.

...

§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly agreed upon in writing, 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.

...

§ 9.10.1 ~~Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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 the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and~~

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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.certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 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 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other indebtedness liabilities 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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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 have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.discharge any such lien or indemnify the Owner from liability.

§ 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, corrected, 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 the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of Claims.any claims by the Owner.

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

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of special warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.Intentionally deleted.

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§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same. In the event that the Owner chooses to conduct an audit, the auditor shall be mutually agreed upon.

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§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

~~**§ 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.~~

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

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

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

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

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

...

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

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

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

...

~~§ 10.2.8 Injury or Damage to Person or Property~~

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, ~~to~~ cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an 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

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agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the ~~fullest extent permitted by law,~~ extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, ~~Architect, Architect's consultants,~~ and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in ~~Section 10.3.1~~ Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this ~~Section 10.3~~ Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

...

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

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

§ 11.1.4 ~~**Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~Intentionally deleted.

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§ 11.2.1 ~~The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ Intentionally deleted.

§ 11.2.2 ~~Failure to Purchase Required Property Insurance.~~ ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ Intentionally deleted.

§ 11.2.3 ~~Notice of Cancellation or Expiration of Owner's Required Property Insurance.~~ ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~ Intentionally deleted.

...

§ 11.3.1 ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~ Intentionally deleted.

~~§ 11.3.2~~ ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.3.2 Intentionally deleted.

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The~~

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~~Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~Intentionally deleted.

...

§ 11.5.1 ~~A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~Intentionally deleted.

§ 11.5.2 ~~Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~Intentionally deleted.

...

§ 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.~~

§ 12.1. If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it ~~shall~~ may be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the ~~Contract Sum~~ Guaranteed Maximum Price and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

The Contractor shall promptly correct failing Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion ~~thereof or after the date for commencement of warranties established under Section 9.9.1, or~~ thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

...

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

§ 12.2.5 Nothing contained in this ~~Section 12.2~~ Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in ~~Section 12.2.2~~ Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems

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just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

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The ~~Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

...

§ 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,~~ 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 13.4.1 ~~**§ 13.4.1** 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. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~ **§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the ~~Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements~~ Owner shall provide or contract for such additional testing, inspection, or ~~approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.~~ approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from~~

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~~time to time at the place where the Project is located.~~in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

§ 13.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees,~~ Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because ~~the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made~~ the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract ~~Documents; or~~Documents.

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.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Intentionally deleted.

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in ~~Section 14.3,~~ 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.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in ~~Section 14.1.1~~ Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in ~~Section 14.1.3.~~Section 14.1.3.

...

.2 fails to make payment to Subcontractors ~~or suppliers~~ for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within thirty (30) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

~~**.4**~~ **.6** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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.2 Accept assignment of subcontracts pursuant to ~~Section 5.4;~~ 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.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

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§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in ~~Section 14.2.1,~~ Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

...

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the ~~Work,~~ 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~~ may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1.~~ delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the ~~extent~~extent:

.1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted,~~ was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause.~~cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor ~~shall~~shall:

...

.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.~~orders related to the Project.

§ 14.4.3 In case of ~~such~~ termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

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~~§ 15.1.2 Time Limits on Claims~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ the Contractor, 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~~

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~~condition giving rise to the Claim, whichever is later.~~Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the ~~Initial Decision Maker~~ Architect is required.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7~~ Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the ~~Initial Decision Maker's~~ Owner's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15. ~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the ~~Contract Sum,~~ Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

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§ 15.1.6.2 ~~If adverse~~ The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a ~~Claim~~ claim for additional time, such Claim shall be documented by data substantiating ~~that weather conditions were abnormal for the period of time,~~ such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

In the event of inclement weather, CMR has allocated an aggregate of 10 days in the project schedule. CMR shall notify Owner of each day qualifying as an inclement weather day according to the following criteria:

a. Rain in excess of /10th of an inch which impacts critical path
b. Wind in excess of 25 MPH which impacts the critical path
c. Temperatures of 38 degrees or less or 100 degrees or higher
d. Muddy conditions that inhibit access to the site or cause work related tasks to be unsafe
e. Lightning within a 15 mile proximity to the site which impacts the critical path

~~§ 15.1.7 Waiver of Claims for Consequential Damages~~

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

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~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.1.7 Calculating Claims for Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for losses of income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the Claim take one or more of the following actions: (1) request additional supporting data from the ~~claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 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.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the ~~Initial Decision Maker~~ Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1)

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provide a response on the requested supporting data, (2) advise the ~~Initial Decision Maker~~ Architect when the response or supporting data will be furnished, or (3) advise the ~~Initial Decision Maker~~ Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~Intentionally deleted. .

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~**Waiver of Lien**

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

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§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable

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to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

...

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. 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.

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

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ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

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.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**WHITE CONSTRUCTION**
By:	**By:**
Signature	**Signature**
Steve Flores, Interim Superintendent	
(Printed name and title)	*(Printed name and title)*
Date:	Date:

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

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~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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Certification of Document's Authenticity

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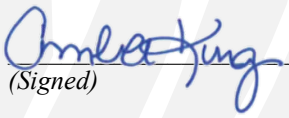
I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:35:44 ET on 03/19/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

03/19/2025

(Dated)

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Electric Utility Easement to the City of Austin on Lake Travis High School Site

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approve the granting of an electric utility easement to the City of Austin on the Lake Travis High School campus and authorize execution of the easement by the Board President or Interim Superintendent.

RATIONALE
As a part of the ongoing development of the high school campus, the District has requested that utility lines be connected to new and existing Agriculture Facilities at Lake Travis High School. In order to accommodate this request, the City of Austin requires an electric utility easement be granted for the property. The easement grants the City of Austin a blanket easement to place, construct, reconstruct, install, operate, repair, maintain, inspect, replace, upgrade or remove (in whole or in part) electric distribution and electric telecommunications lines and systems, consisting of a variable number of electric lines, transformers, and all necessary or desirable appurtenances and structures (the "Facilities"). The District reserves the right to replace this Easement with a replacement easement containing a surveyed metes and bounds description of a defined easement area. After final construction and installation of the Facilities, the District may provide the City of Austin a metes and bounds description of the defined easement being an area extending five feet on all sides of the actual installed location of the Facilities.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
Austin Energy Electric Utility Easement

MEETING DATE
May 21, 2025

Easement No._____
File No. 624567
Address: 3322 S FM 620 Road
Initials: LS

ELECTRIC UTILITY EASEMENT

STATE OF TEXAS
COUNTY OF TRAVIS

DATE: _____

GRANTOR: LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT, a Texas public independent school district

GRANTOR'S ADDRESS: 3322 RR 620 South
Austin, Texas 78738-6804

GRANTEE: CITY OF AUSTIN

GRANTEE'S ADDRESS: P. O. BOX 1088
AUSTIN, TRAVIS COUNTY, TX 78767

PROPERTY: Tract One: Being 23.46 acres and 55 acres tract out of the A. BECK SURVEY 54 in Travis County, Texas. Being the same property described in Warranty Deed recorded in Volume 7941, Page 395 of the Deed Records of Travis County, Texas. SAVE AND EXCEPT that portion of the property conveyed to the State of Texas by Deed recorded in Volume 10496, Page 844 Real Property Records of Travis County, Texas.

Tract Two: 24.94 acres out of the A. BECK SURVEY NO 524, ABSTRACT 2733, in Travis County, Texas. Being the same property described in Judgment of Court in Absence of Objection, recorded in Volume 9757, Page 601 of the Real Property Records of Travis County, Texas.

Tract Three: 25.00 acres out of the A. BECK SURVEY NO. 524, ABSTRACT NO. 2733, Travis County, Texas. Being the same property described in Special

Warranty Deed recorded in Volume 13258, Page 3066 of the Real Property Records of Travis County, Texas.

Tract Four: 27.338 acres out of the J. BECK SURVEY NO. 524 in Travis County, Texas. Being the same property described in Special Warranty Deed recorded in Document No. 2000171882 of the Official Public Records of Travis County, Texas.

SAVE AND EXCEPT that portion of the property conveyed to the State of Texas by Deed recorded in Document No. 2023125812 of the Official Public Records of Travis County, Texas.

GRANTOR for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby grant, sell and convey to GRANTEE an easement and right of way along, over, under, and across the Property (the "Easement") to place, construct, reconstruct, install, operate, repair, maintain, inspect, replace, upgrade or remove (in whole or in part) electric distribution and electric telecommunications lines and systems, consisting of a variable number of electric lines, transformers, and all necessary or desirable appurtenances and structures (the "Facilities"), in the Easement for the purposes stated above.

GRANTEE shall have the right and privilege at any reasonable time or times to enter upon and cross the Property to the extent necessary for the foregoing purposes, and to cut or trim trees and shrubbery and remove obstructions as necessary to keep them clear of the Facilities and permit GRANTEE unimpeded access to the Facilities in the Easement for the purposes stated above.

GRANTOR may not place, erect or maintain in the Easement (a) any permanent structures, including, but not limited to habitable structures such as homes or offices, (b) any structure of any kind, in such proximity to the Facilities as would constitute a violation of the National Electric Safety Code in effect at the time the structure is erected, nor, (c) without Grantee's prior written consent, any structure, including, but not limited to drainage, filtration or detention ponds, or make changes in grade, elevation or contour of the land which would impair Grantee's access to its Facilities.

After final construction and installation of the Facilities, the easement hereby granted shall be limited to an area extending five feet on all sides of the actual installed location of the FACILITIES (the "Easement Area") and this easement shall no longer be in force or effect thereafter as to those portions of the Property outside the easement.

GRANTOR reserves the right to replace this Easement with a replacement easement ("Replacement Easement") containing a surveyed metes and bounds description of the easement area. The survey and metes and bounds description shall be prepared at Grantor's expense. This Easement shall remain in full force and effect until such time as the Replacement Easement has been accepted by GRANTEE and duly recorded.

Upon completion of initial construction or any subsequent work in the Easement, GRANTEE shall repair any material damage to the Property so as to restore same to substantially the same condition it was in prior to commencement of the work, but GRANTEE shall not be required to replace any trees, shrubbery or obstructions which GRANTEE removed due to interference with its use of the Easement.

TO HAVE AND HOLD the same perpetually unto GRANTEE and to its successors and assigns, together with the right and privilege at any reasonable time or times to enter upon and cross the Property for the purposes hereinabove stated.

GRANTOR does hereby covenant and bind itself, its heirs, successors, assigns and legal representatives to warrant and forever defend the title to the Easement unto GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Easement or any part thereof when the claim is by, through, or under GRANTOR, but not otherwise. Such rights and Easement shall be covenants running with the land and shall be binding upon the GRANTOR, its personal representatives, heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the undersigned has executed the foregoing instrument as of the date first above written.

GRANTOR:

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT,
a Texas public independent school district

By: _____
Erin Archer, President of the Board of Trustees

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on this _____ day of _____, 20___ by Erin Archer, in the capacity as the President of the Board of Trustees of the Lake Travis Independent School District, a Texas public independent school district on behalf of said school district.

_____
Notary Public, State of Texas

_____
Notary's Printed or Typed Name

_____
Notary's Commission Expires

AFTER RECORDING, RETURN TO:
City of Austin - Austin Energy
4815 Mueller Blvd.
Austin, Texas 78723
Attn: Rosario Navarro
Blanket Electric Utility Easement
Legal Review 06/15/07

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Selection of American Constructors as Contractor for JOC #23-18 for Playground Area Landscape Renovations

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approve the selection of American Constructors as Contractor for JOC #23-18 for playground area landscape renovations at various elementary schools.

RATIONALE
The District administration is recommending American Constructors as the General Contractor for the playground area landscape renovation projects. It is expected that the contract with American Constructors for this project will exceed $100,000. According to Board Policy CV (LOCAL), the Board must approve construction contracts valued at or above $100,000.

The Cost of Work for JOC #23-18 includes the following:

- Installation of new pavers, trees, sod and irrigation system at Lake Point Elementary
- Installation of retaining walls, pavers, benches, trees, sod and fencing at Lake Travis Elementary
- Regrade playfield, installation of sod, irrigation system, resurface track and fence repairs at Serene Hills Elementary

BUDGET PROVISIONS
2023 Bond Program - $864,916

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Cristy Soares – Director of Purchasing

ATTACHMENTS
American Constructors Pricing – LPE
American Constructors Pricing – LTE
American Constructors Pricing – SHE

MEETING DATE
May 21, 2025

American Constructors

PROPOSAL

Date: 05/14/25

Owner: Lake Travis ISD
16101 Hwy 71, Bldg B
Austin, TX 78738

Contractor: American Constructors
11900 West Parmer Lane
Cedar Park, Texas 78613
JOC Contract #21-021

Project: Lake Point ES Playground Improvements

Scope of Work Includes:

1. Excavate for paver system
2. Install new paver system
3. Plant (2) Cedar Elm Tree and (1) Shumard Oak Tree
4. Install sod and irrigation

List of Plans / Specifications:

LAKE POINT ELEMENTARY SCHOOL PEDESTRIAN ENTRANCE IMPROVEMENTS by Blu Fish Collaborative on 05/01/25

Exclusions / Clarifications

1. Excludes testing, removal or abatement of existing hazardous materials
2. Excludes permitting and material testing
3. Excludes moving of existing furniture, fixtures and equipment.
4. Contractor is not responsible for any FF&E left in the work area
5. Relocation or repair of underground utilities that are not shown
6. All work during normal business hours

Total Amount of Proposal **$88,287**

Proposal is valid for 30 days from the date listed. Proposal assumes all areas will be available so work can proceed, uninterrupted to completion. All work to be done during normal hours unless otherwise noted in the proposal.

Accepted by:

Signature _____ Date _____

Printed name _____ Title _____

American Constructors

PROPOSAL

Date: 05/14/25

Owner: Lake Travis ISD
16101 Hwy 71, Bldg B
Austin, TX 78738

Contractor: American Constructors
11900 West Parmer Lane
Cedar Park, Texas 78613
JOC Contract #21-021

Project: Lake Travis ES Playground Improvements

Scope of Work Includes:

1. Excavate for new retaining walls and pavers
2. Install limestone retaining walls
3. Install paver subgrade and pavers
4. Install boulders and benches
5. Install (4) new live oak trees and sod
6. Install fencing at playground

List of Plans / Specifications:

LAKE TRAVIS ELEMENTARY SCHOOL PLAYGROUND IMPROVEMENTS by Blu Fish Collaborative on 5/1/25

Exclusions / Clarifications

1. Excludes testing, removal or abatement of existing hazardous materials
2. Excludes permitting and material testing
3. Excludes moving of existing furniture, fixtures and equipment.
4. Contractor is not responsible for any FF&E left in the work area
5. Relocation or repair of underground utilities that are not shown
6. All work during normal business hours

Total Amount of Proposal **$488,874**

Proposal is valid for 30 days from the date listed. Proposal assumes all areas will be available so work can proceed, uninterrupted to completion. All work to be done during normal hours unless otherwise noted in the proposal.

Accepted by:

Signature _____ Date _____

Printed name _____ Title _____

Lake Travis ES Playground Improvements

Item	Description	Amount
1	**Earthwork and Grading**	**$121,053**
2	**Limestone Retaining Walls**	**$121,450**
3	**Pavers**	**$96,000**
4	**Utilities**	**$26,790**
5	**Irrigation**	**$12,775**
6	**Landscaping**	**$27,485**
7	**Fence Removal and Replacement**	**$10,790**
8	**Outdoor Tables**	**$3,250**
9	**Boulders**	**$11,000**
10	**Toilets & Final Clean**	**3250**
11	**Supervision**	**$13,572**
	Subtotal	$447,415
	Fee	$22,371
	Subtotal	$469,786
	Bonds & Insurance	$19,088
	Total	**$488,874**

American Constructors

PROPOSAL

Date: 05/14/25

Owner: Lake Travis ISD
16101 Hwy 71, Bldg B
Austin, TX 78738

Contractor: American Constructors
11900 West Parmer Lane
Cedar Park, Texas 78613
JOC Contract #21-021

Project: Serene Hills ES Playground Improvements

Scope of Work Includes:

1. Regrade playfield per plans
2. Install playfield irrigation system
3. Install sod
4. Remove and reinstall track material
5. Repair tree well and install pathway from storage building to playfield

List of Plans / Specifications:
SERENE HILLS ELEMENTARY PLAY FIELD RESTORATION CONSTRUCTION DOCUMENTS by Blu Fish issued on 04/11/2025

Exclusions / Clarifications

1. Excludes testing, removal or abatement of existing hazardous materials
2. Excludes permitting and material testing
3. Excludes moving of existing furniture, fixtures and equipment.
4. Contractor is not responsible for any FF&E left in the work area
5. Relocation or repair of underground utilities that are not shown
6. All work during normal business hours

Total Amount of Proposal **$287,755**

Proposal is valid for 30 days from the date listed. Proposal assumes all areas will be available so work can proceed, uninterrupted to completion. All work to be done during normal hours unless otherwise noted in the proposal.

Accepted by:

Signature _____ Date _____

Printed name _____ Title _____

Item	Description	Amount
1	**Grading**	**$91,590**
2	**Irrigation**	**$36,890**
3	**Landscape**	**$60,985**
4	**Tree Well and Path to Storage Area**	**$1,364**
5	**Track Resurfacing**	**$65,768**
6	**Fence Repairs for Access**	**$3,500**
7	**Temporary Toilets**	**$628**
8	**Final Clean**	**$850**
9	**Supervision**	**$1,385**
	Subtotal	$262,960
	Fee	$13,148
	Subtotal	$276,108
	Bonds & Insurance	$11,647
	Total	**$287,755**

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Selection of American Constructors as Contractor for JOC #23-124 for The Cottage Interior Renovations

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approve the selection of American Constructors as Contractor for JOC #23-124 for The Cottage interior renovations project.

RATIONALE
The District administration is recommending American Constructors as the General Contractor for The Cottage interior renovations project. It is expected that the contract with American Constructors for this project will exceed $100,000. According to Board Policy CV (LOCAL), the Board must approve construction contracts valued at or above $100,000.

The Cost of Work for JOC #23-124 includes the following:

- Demolition and installation of raised floor
- Replacement of certain doors and windows
- Replacement of kitchen and utility room cabinets, shelving and storage

BUDGET PROVISIONS
2023 Bond Program - $138,256

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Cristy Soares – Director of Purchasing

ATTACHMENTS
American Constructors Pricing - The Cottage

MEETING DATE
May 21, 2025

Easement No._____
File No. 624567
Address: 3322 S FM 620 Road
Initials: LS

ELECTRIC UTILITY EASEMENT

STATE OF TEXAS
COUNTY OF TRAVIS

DATE: _____

GRANTOR: LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT, a Texas public independent school district

GRANTOR'S ADDRESS: 3322 RR 620 South
Austin, Texas 78738-6804

GRANTEE: CITY OF AUSTIN

GRANTEE'S ADDRESS: P. O. BOX 1088
AUSTIN, TRAVIS COUNTY, TX 78767

PROPERTY: Tract One: Being 23.46 acres and 55 acres tract out of the A. BECK SURVEY 54 in Travis County, Texas. Being the same property described in Warranty Deed recorded in Volume 7941, Page 395 of the Deed Records of Travis County, Texas. SAVE AND EXCEPT that portion of the property conveyed to the State of Texas by Deed recorded in Volume 10496, Page 844 Real Property Records of Travis County, Texas.

Tract Two: 24.94 acres out of the A. BECK SURVEY NO 524, ABSTRACT 2733, in Travis County, Texas. Being the same property described in Judgment of Court in Absence of Objection, recorded in Volume 9757, Page 601 of the Real Property Records of Travis County, Texas.

Tract Three: 25.00 acres out of the A. BECK SURVEY NO. 524, ABSTRACT NO. 2733, Travis County, Texas. Being the same property described in Special

Warranty Deed recorded in Volume 13258, Page 3066 of the Real Property Records of Travis County, Texas.

Tract Four: 27.338 acres out of the J. BECK SURVEY NO. 524 in Travis County, Texas. Being the same property described in Special Warranty Deed recorded in Document No. 2000171882 of the Official Public Records of Travis County, Texas.

SAVE AND EXCEPT that portion of the property conveyed to the State of Texas by Deed recorded in Document No. 2023125812 of the Official Public Records of Travis County, Texas.

GRANTOR for good and valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby grant, sell and convey to GRANTEE an easement and right of way along, over, under, and across the Property (the "Easement") to place, construct, reconstruct, install, operate, repair, maintain, inspect, replace, upgrade or remove (in whole or in part) electric distribution and electric telecommunications lines and systems, consisting of a variable number of electric lines, transformers, and all necessary or desirable appurtenances and structures (the "Facilities"), in the Easement for the purposes stated above.

GRANTEE shall have the right and privilege at any reasonable time or times to enter upon and cross the Property to the extent necessary for the foregoing purposes, and to cut or trim trees and shrubbery and remove obstructions as necessary to keep them clear of the Facilities and permit GRANTEE unimpeded access to the Facilities in the Easement for the purposes stated above.

GRANTOR may not place, erect or maintain in the Easement (a) any permanent structures, including, but not limited to habitable structures such as homes or offices, (b) any structure of any kind, in such proximity to the Facilities as would constitute a violation of the National Electric Safety Code in effect at the time the structure is erected, nor, (c) without Grantee's prior written consent, any structure, including, but not limited to drainage, filtration or detention ponds, or make changes in grade, elevation or contour of the land which would impair Grantee's access to its Facilities.

After final construction and installation of the Facilities, the easement hereby granted shall be limited to an area extending five feet on all sides of the actual installed location of the FACILITIES (the "Easement Area") and this easement shall no longer be in force or effect thereafter as to those portions of the Property outside the easement.

GRANTOR reserves the right to replace this Easement with a replacement easement ("Replacement Easement") containing a surveyed metes and bounds description of the easement area. The survey and metes and bounds description shall be prepared at Grantor's expense. This Easement shall remain in full force and effect until such time as the Replacement Easement has been accepted by GRANTEE and duly recorded.

Upon completion of initial construction or any subsequent work in the Easement, GRANTEE shall repair any material damage to the Property so as to restore same to substantially the same condition it was in prior to commencement of the work, but GRANTEE shall not be required to replace any trees, shrubbery or obstructions which GRANTEE removed due to interference with its use of the Easement.

TO HAVE AND HOLD the same perpetually unto GRANTEE and to its successors and assigns, together with the right and privilege at any reasonable time or times to enter upon and cross the Property for the purposes hereinabove stated.

GRANTOR does hereby covenant and bind itself, its heirs, successors, assigns and legal representatives to warrant and forever defend the title to the Easement unto GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim the Easement or any part thereof when the claim is by, through, or under GRANTOR, but not otherwise. Such rights and Easement shall be covenants running with the land and shall be binding upon the GRANTOR, its personal representatives, heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the undersigned has executed the foregoing instrument as of the date first above written.

GRANTOR:

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT,
a Texas public independent school district

By: _____
Erin Archer, President of the Board of Trustees

ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on this _____ day of _____, 20___ by Erin Archer, in the capacity as the President of the Board of Trustees of the Lake Travis Independent School District, a Texas public independent school district on behalf of said school district.

_____
Notary Public, State of Texas

_____
Notary's Printed or Typed Name

_____
Notary's Commission Expires

AFTER RECORDING, RETURN TO:
City of Austin - Austin Energy
4815 Mueller Blvd.
Austin, Texas 78723
Attn: Rosario Navarro
Blanket Electric Utility Easement
Legal Review 06/15/07

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Selection of American Constructors as Contractor for JOC #23-116 for Hudson Bend Middle School Track Event Additions

RECOMMENDED ACTION
For approval with the Consent Agenda.
Approve the selection of American Constructors as Contractor for JOC #23-116 for Hudson Bend Middle School track event additions.

RATIONALE
The District administration is recommending American Constructors as the General Contractor for the addition of track events at Hudson Bend Middle School. It is expected that the contract with American Constructors for this project will exceed $100,000. According to Board Policy CV (LOCAL), the Board must approve construction contracts valued at or above $100,000.

The Cost of Work for JOC #23-116 includes the following:

- Installation of two long jump runways and pits
- Installation of track surfacing material

BUDGET PROVISIONS
2024 Bond Program - $103,329

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Cristy Soares – Director of Purchasing

ATTACHMENTS
American Constructors Pricing – HBMS Track Events

MEETING DATE
May 21, 2025

American Constructors

PROPOSAL

Date: 05/15/25

Owner: Lake Travis ISD
16101 Hwy 71, Bldg B
Austin, TX 78738

Contractor: American Constructors
11900 West Parmer Lane
Cedar Park, Texas 78613
JOC Contract #21-021

Project: Hudson Bend MS Long Jump

Scope of Work Includes:

1. Install two long jump runways and pits
2. Install track surfacing material to match existing

Exclusions / Clarifications

1. Excludes testing, removal or abatement of existing hazardous materials
2. Excludes permitting and material testing
3. Excludes moving of existing furniture, fixtures and equipment.
4. Contractor is not responsible for any FF&E left in the work area
5. Relocation or repair of underground utilities that are not shown
6. All work during normal business hours

Total Amount of Proposal **$103,329**

Proposal is valid for 30 days from the date listed. Proposal assumes all areas will be available so work can proceed, uninterrupted to completion. All work to be done during normal hours unless otherwise noted in the proposal.

Accepted by:

Signature _____ Date _____

Printed name _____ Title _____

Item	Description	Amount
1	**Concrete**	**$38,500**
2	**Track Surface**	**$46,000**
3	**Equipment**	**$1,275**
4	**Sand**	**$1,500**
5	**Supervision**	**$6,540**
	Subtotal	$93,815
	Fee	$4,691
	Subtotal	$98,506
	Bonds & Insurance	$4,823
	Total	**$103,329**

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Selection of American Constructors as Contractor for JOC #23-131 for Lake Travis High School Temporary Marching Band Lot

RECOMMENDED ACTION
For approval with the Consent Agenda.

RATIONALE
The District administration is recommending American Constructors as the General Contractor for the Lake Travis High School temporary marching band lot. It is expected that the contract with American Constructors for this project will exceed $100,000. According to Board Policy CV (LOCAL), the Board must approve construction contracts valued at or above $100,000.

Due to the construction of the new competition gym and Fine Arts addition on the site of the current band practice area, another parking lot at Lake Travis High School will be converted into a temporary practice area for the marching band.

The Cost of Work for JOC #23-131 includes the following:

- Applying a seal coat to the parking lot
- Striping of 100-yard lines
- Electrical work for lighting and storage units
- Construction of a concrete pad for the lifted platform

BUDGET PROVISIONS
2023 Bond Program - $160,385

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Cristy Soares – Director of Purchasing

ATTACHMENTS
American Constructors Pricing LTHS Band Lot

MEETING DATE
May 21, 2025

American Constructors

PROPOSAL

Date: 05/01/25

Owner: Lake Travis ISD
16101 Hwy 71, Bldg B
Austin, TX 78738

Contractor: American Constructors
11900 West Parmer Lane
Cedar Park, Texas 78613
JOC Contract #21-021

Project: Lake Travis HS Band Lot Striping - P8

Scope of Work Includes:

1. Seal coat parking lot
2. Ghost stripe parking line
3. Stripe 100 yard band lot with out end zones
4. Field dot striping
5. Electrical for band storage units
6. Concrete pad for scissor lift

Exclusions / Clarifications

1. Excludes testing, removal or abatement of existing hazardous materials
2. Excludes permitting and material testing
3. Excludes moving of existing furniture, fixtures and equipment.
4. Contractor is not responsible for any FF&E left in the work area
5. Relocation or repair of underground utilities that are not shown
6. All work during normal business hours
7. Band storage units

Total Amount of Proposal **$160,385**

Proposal is valid for 30 days from the date listed. Proposal assumes all areas will be available so work can proceed, uninterrupted to completion. All work to be done during normal hours unless otherwise noted in the proposal.

Accepted by:

Signature _____ Date _____

Printed name _____ Title _____

Item	Description	Amount
1	**Seal Coat Striping**	**$30,066**
2	**Field Dot**	**$4,427**
3	**Electrical for Band Storage Lights**	**$106,217**
4	**Concrete Pad for Scissor Lift**	**$4,934**
5	**Porta Potty**	**$500**
	Subtotal	$146,144
	Fee	$7,307
	Subtotal	$153,451
	Bonds & Insurance	$6,934
	Total	**$160,385**

Stripe-it-up
PARKING LOT STRIPING

PO Box 200544
Austin, Tx 78720

2/6/2025

Project Name Lake Travis High School Band Lot

Proposal # MM2061647

Address	Spillman Loop
City/State/Zip	Austin, Tx
Tax Status	Exempt.
Class	14.New Construction

Customer	GC

Line Item	Description	Qty	U/M	UC	Line Total
1	Crack Filling of Lines > 1/4" in Width Prior to Sealing	3,000	LF	$ 0.65	$ 1,950.00
2	Seal Coating of Asphalt @ 0.26/SY per Gallon Application Rate	55,175	SF	$ 0.26	$ 14,345.50
3	New Striping Layout: "Ghost" Painted Markings, Hatching, & Graphics After Seal Coating ***Price Includes Procurement of 12" STAFF Stencils to Restripe to Match Existing Conditions**	1	LS	$ 3,850.00	$ 3,850.00
4	New Striping Layout: 100 Yard Band Lot w/o End Zones	1	LS	$ 8,000.00	$ 8,000.00
5	Restripe Fire Lane to Match Existing Conditions	1,920	LF	$ 1.00	$ 1,920.00

Price Includes (1) Seal Coat Crew Mob; Any Add'l are $2,750/ea
Price Includes (1) Mob; Any Add'l are $1,000/ea
Price Minor Surface Prep with Brooms & Blowers
Parking Lot is to be Free of Irrigation & Parked Cars Prior to Mob

Proposal is Valid for 90 Days. All Proposals are subject to SIU's Terms & Conditions on following page

Subtotal	$ 30,065.50
Tax (8.25%)	-
Total	$ 30,065.50

ACH / EFT & Check Payments ONLY

Accepted By _____ _____
Customer Signature Date

Submitted By _____ _____
Michael Martino (512) 893-5420 Date
Estimator michael@siutx.com

PO Box 200544
Austin, Tx 78720

2/6/2025

Project Name Lake Travis High School Band Lot

Proposal # MM2061647

Address	Spillman Loop
City/State/Zip	Austin, Tx
Tax Status	Exempt.
Class	14.New Construction

Customer	GC

General Terms & Conditions for services of Stripe-It-Up, LLC

629

Terms & Conditions –

The amounts included in this estimate are based on information provided and are subject to change if new information is provided or differing site conditions are encountered. All changes in the scope of the work must be agreed prior to the commencement of work. Proposal Excludes Bonding, Permits, Layout or Surveying, Excavating, Saw Cutting, Traffic Control or Flagman. Night work or weekend work, sweep/clean prior to scope of work above and any items of work not specifically quoted. Stripe-It-Up will execute only those items of work listed in the "scope of work" any additional items of work will require a written change order in advance. Actual quantities will be verified in place upon completion and billed at unit prices shown above. All agreements must be made in writing. Scope of Work standards for newly constructed areas are proposed to comply with the Texas Department of Transportation standards. Other Scope of Work specifications must be specifically outlined. All permits and fees are excluded unless otherwise noted. Stripe-It-Up is not responsible for utility lines less than 12 inches deep.

Insurance –

Stripe-It-Up will carry workers compensation, General Liability, and Auto Insurance for labor provided in the performance of this contract.

Customer Responsibility –

Billing instructions/portals must be provided & set up prior to scheduling work. Contractor agrees to pay reasonable attorney fees, expert fees, all costs of court, compliance request, billing portals, courier expenses outside of normal postage and any other expenses incurred by Stripe-It-Up in the collection of any sums due under the performance of this contract. The venue for any legal action under this contract shall be Travis County, Texas. The parties expressly agree to waive the right to a jury trial. The above prices, specifications, and conditions are satisfactory and are hereby accepted. Payment will be paid in Full as outlined above. Fees for our services are due 30 days from the date of the invoice. Payments should be remitted to Stripe-It-Up, PO Box 200544, Austin, TX 78720.

Stripe It Up, LLC Does NOT Accept P-Card/Debit/Credit Card Payments. ACH/EFT & Checks Only.

Field Dots, LLC

2131 N. Collins, Suite 433 - 738
Arlington, TX 76011
FieldDots@gmail.com

Field Dots, LLC - When Accuracy Matters

Estimate

ADDRESS
Lake Travis HS
Lake Travis ISD ACCOUNTS PAYABLE

SHIP TO
Lake Travis HS
Richard Hicks
3324 RR 620
Austin, TX 78738

ESTIMATE 22352
DATE 02/18/2025

630

CONTACT NAME
Richard Hicks

CONTACT EMAIL
rhicks76@gmail.com

CONTACT PHONE #
281-455-9399

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
INSTRUCTIONS	We can ADD, CHANGE, or DELETE items to fit your budget. We paint "as is"; we are not responsible if the surface does not hold paint due to dirt, debris, loose gravel, oil stains, etc. or for any areas that cannot be painted due to objects on the field. .	0	0.00	0.00
FIELD DOTS	Grid: 4 x 1 Goal to goal Front sideline to back Pyware sideline Primary Color: Black Secondary Color (available on 1x1 or 2x2 only): Red .	1	2,700.00	2,700.00
BAND CIRCLE SET	Each circle set has 3 circles (White). .	1	600.00	600.00
ADDITIONAL HASH OPTION	Add a Pyware Hash (Orange). .	1	650.00	650.00
MOBILIZATION FOR FIELD DOTS TEAM	Transporting team, supplies, and heavy equipment to your field location. .	151	1.50	226.50
LODGING	.	1	250.00	250.00
FIELD STRIPING	Numbers, arrows, yard lines, ticks, and hashes. Goal to goal Front sideline to back sideline Style: NCAA Color: White .	0	0.00	0.00
NOT INCLUDED Cover Up Paint.	Cover Up Paint on old markings is NOT INCLUDED on this estimate. You have indicated that your markings are very faded. To add Cover Up paint, please contact our office at	0	0.00	0.00

FieldDots@gmail.com .

.

NOTES FOR PAINT TEAM	They do have a band tower.	0	0.00	0.00

ATTACHED TERMS & CONDITIONS are a part of this Estimate.
Acceptance of Estimate = Acceptance of the Terms & Conditions.

SUBTOTAL	4,426.50
TAX	0.00
TOTAL	**$4,426.50**

631

Accepted By

Accepted Date

TOWER ELECTRIC

- BRINGING NEW HEIGHTS TO ELECTRICAL SERVICE -

April 30, 2025

Mr. Mitch Hayward
American Constructors
11900 W Parmer Lane, Suite 200
Austin, TX 78613

t 512.294.3165

632

Re: Lake Travis HS Temp

Project Number: 25-161

Dear Mitch,

We are pleased to submit for your consideration, our Electrical Proposal to furnish and install the necessary labor, materials, and tools to complete electrical scope of work for the above referenced project. Our price is based on and in accordance with the electrical drawings and specifications as listed below.

ELECTRICAL BASE BID	$106,217.00
FIRE ALARM SYSTEM	$0.00
OTHER	$0.00
TOTAL BID PRICE	**$106,217.00**

The Base Bid proposal is based on the following documentation:

Drawings:	Narrative, Dated April 28th, 2025
Specifications:	As indicated in the narrative. Section 26000, Electrical System and related General Conditions indicated in the contract documents, Dated April 28th, 2025
Addendums:	None.

System Pricing Breakout:

1.	General Costs		$3,141.00
2.	Switchgear	Includes labor to install equipment	$39,940.00
3.	Sub-Feeders- Material w/ Labor	**Feeders-** 750' 2'' PVC, **Trailers-** 150' 1 1/2" PVC, Includes Trenching	$28,819.00
4.	Sub-Feeders- Wire w/ Labor	**Feeders-**2,250' #2/0 AL #2 GRD, **Trailers-** 600' #4 AL, **Inside-** 120' #300 AL	633 $20,055.00
5.	Grounding	For Disconnects and frame	$725.00
6.	Site Power (Scissor Lift Outlets)	New Wire, Breakers, Outlets and replace broken J Box	$2,366.00
7.	Equipment Rental & Fuel		$11,171.00
			$106,217.00

The Clarifications of this proposal are as follows:

1. This proposal and all associated pricing, if accepted, is conditional upon an agreeable and mutual contract between Tower Electric and the General Contactor of the project. Tower Electric has the right to review and accept the Prime Contract prior to the acceptance of the contract between Tower Electric and the General Contractor. Both parties must mutually accept all contract language.
2. Tower Electric has walked the space and is aware of the conditions of the project as visibly seen at the time. Acknowledgement of tentative schedule, June 2nd, 2025 to June 23rd, 2025. (3 Week Schedule)
3. Work to be performed during normal business hours.
4. The base price as indicated above is based on the Electrical Drawings, specifications and any addendum posted that are part of this scope of work. Any exceptions made are defined within this proposal.
5. Tower Electric is not responsible for updating existing workmanship of electrical installations for new code issues being enforced by current inspectors and/or the authority having jurisdiction. Existing installations within current/existing building spaces, including but not limited to walls and ceiling spaces are excluded from the intended scope of work and is not included within this proposal. If the magnitude of additional work to be required to bring up to code and can be identified prior to bid time, and

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Liberty Hill, TX 78642
303.690.0235
303.990.2882 (cell)

appropriate allowance will be suggested as an alternate price and identified within this proposal.

6. Third party commissioning is provided by the GC. The Commissioning Authority (CxA) will develop the commissioning plan and provide all required documents, reports, checklists, software, and logs needed to complete the commissioning process.
7. Shop drawings, grounding diagrams, wiring diagrams and grounding riser diagram are to be provided by the Electrical Engineer. Tower Electric will provide location of ground rods and grounding electrodes connections and routing of grounding conductors on a PDF drawing for the engineer's use.
8. This proposal does not include escalation for Deviations in the market resulting in above normal increases and or material shortages. Changing Market conditions will be subject to cost adjustment via changer.

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Scope of work outlined:

1. 750'L x 12''W x 6''-24''D- Trench from building admin (panel 1MP) to future site for storage units. Conduit and wire size are defined in narrative. (2) in-ground pull boxes will be required for the outside run. Backhoe will need to be used for entirety of the trench.
2. Strut rack built in the area of the storage containers to mount the gutter. XFMR, 200a disconnect, and (3) disconnects serving power for the storage units. Concrete pad poured by GC.
3. Feeds for the storage units will be run underground, sized per the narrative.
4. Hand digging will be required next to the admin building to bring conduits out of the building, by the transformer next to admin building and next to every light pole along the parking lot.
5. Power ran to light pole for charging of scissor lift. Assumption is to reuse existing conduits but pull new circuits that are not on a photocell or timeclock and tie into panel serving the light poles. The junction box next to the light pole we are to pull wire into is broken and not to code, this will be replaced with a new 3R junction box.
6. 50' per trailer connection allowance carried, included is the narrative conduit and wire size.
7. Backhoe will be needed for majority of the trenching, ride along trencher will be used for trailer feeds.

This Proposal specifically includes:

1. Insurance requirements made by the State of Texas, the Authorities having jurisdiction, and any nominal requirements of the General Contractor for the project.
2. U.L. rated material and labor.
3. Mobilization Fees.

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4. Tools and equipment for installation of the electrical scope of work.
5. Electrical material submittals and record drawings.
6. Electrical wiring methods and materials in conformance with the N.E.C. and local code requirements.
7. Temporary Power for construction hand tools, temporary lighting per OSHA standards.
8. Necessary Equipment to perform and install the electrical scope of work.
9. Electrical Safe-off only.
10. Complete **Switchgear Package/Modifications** per drawings and specifications. 635
11. X-Ray and core drilling for Electrical Installations only.
12. Excavation for all underground electrical systems.
13. Composite clean-up. Dumpster not provided by EC.

The proposal specifically excludes:

1. Performance & Payment Bond.
2. Permit and inspection fees.
3. Bid Bond.
4. Builders Risk Insurance.
5. Use Tax.
6. Material sales tax.
7. Utility Company fees and charges.
8. Overtime impacted by schedule and non-conformance of other trades.
9. Prevailing wage rates.
10. Liquidated Damages.
11. Electric File transfer fees.
12. Parking costs for our employees.
13. Demolition.
14. Saw-cutting of concrete or asphalt.
15. Permit and inspection fees.
14. Patching of concrete and asphalt areas to adhere to specific electrical installation.
15. Restoration and/or refinishing of drywall, concrete or asphalt.
16. Cutting of ceiling tiles and/or any other finished materials for electrical installations.
17. Waste removal fees. Including any existing lamp or ballasts.
18. Spares and/or owner attic stock.
19. Painting of exposed conduit or panels.
16. Composite clean-up.
20. Austin energy rebate forms.
21. BIM/3D Modelling.
22. Third-party commissioning or testing.
23. Light fixture tenting to ensure ceiling fire ratings.

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24. Fireproofing of any penetrations or installations.
25. Flashing, counter flashing, pitchpans or weather proofing of all roof penetrations.
26. Access Panels.
27. Concrete house-keeping pads for electrical equipment.
28. Concrete light poles bases/caissons. Including excavation, rebar, forming and survey.
29. Landscaping repairs.
30. Rock excavation.
31. Dewatering for all site electrical installation.
32. Removal or replacement of any soils found to be contaminated or unsuitable for said project.
33. Code updating of existing building if applicable.
34. Repairs or corrections to existing electrical code violations and/or substandard workmanship existing in all electrical systems and/or material, equipment and installations to be relocated, reused or connected to.
35. Repairs of damaged irrigation.

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This proposal is based on the prices of building products (such as conduit, fittings, wire, etc. both metal and plastic) quoted to us as of the date of this proposal. Due to the rapidly rising metal and plastic prices, this proposal is subject to increase if any building materials increase prior to the execution of a written agreement, by the amount of increases quoted by our intended suppliers and/or subcontractors. (We will provide you proof of any increases.)

If this proposal is accepted and Tower Electric, Inc is to proceed with the scope of work indicated within the contract documents, a written "Notice to Proceed" is required. Upon receipt, all major equipment including, but not limited to, Switchgear, Fixtures, & Fire Alarm Equipment and Shop Drawings, have a standard 6-8 week lead time unless specifically indicated within this proposal.

This proposal includes the specified appropriate project management, mobilization, shift labor and/or premium labor to adhere to the project schedule and/or phasing. This proposal excludes any accelerated costs not caused by **Tower Electric, Inc.**

This proposal for Lake Travis HS Temp is subject to change if the disconnects and breakers are not released by 5.15.2025 due to tariff increase on Switchgear systems.

Your consideration of our firm for completing the subcontracted work is valued and appreciated. Please do not hesitate to contact us if you have any questions regarding this writing.

Sincerely,

Ryan

Ryan Basta
General Manager
Tower Electric, Inc.
rbasta@towerelectricinc.com

Estimate

American Constructors

PROJECT: Lake Travis High School Temporary Band Lot

SUBCONTRACTOR: American Constructors

SUBJECT: Concrete Pad For Scissor Lift

COST BREAKDOWN		638
Concrete Pad		
Labor		$1,440
Equipment		$1,500
Material		$1,350
	Subtotal	$4,290
Insurance & Fee		$644
Total		**$4,934**
Assumptions/Clarifications		
-Exclusions: Tax, Rock Excavation		

AGENDA ITEM ACTION SHEET

AGENDA ITEM
April 15, 2025 Special Called Board Meeting, April 16, 2025 Regular Board Meeting, April 21, April 22, April 30 and May 1, 2025 Special Called Board Meeting Minutes and May 14, 2025 Special Called Canvassing the Election Minutes

RECOMMENDED ACTION
For approval with the Consent Agenda.

RATIONALE
Minutes for each Board meeting shall be approved and on file in the Superintendent's office.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Suzanne Kelbaugh - Executive Assistant to the Superintendent of Schools

ATTACHMENTS
April 15, 2025 Special Called Board Meeting Minutes
April 16, 2025 Regular Board Meeting Minutes
April 21, 2025 Special Called Board Meeting Minutes
April 22, 2025 Special Called Board Meeting Minutes
April 30, 2025 Special Called Board Meeting Minutes
May 1, 2025 Special Called Board Meeting Minutes
May 14, 2025 Special Called Canvassing the Election Minutes

MEETING DATE
May 21, 2025

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on April 15, 2025, beginning at 4:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 4:02 p.m.

Quorum Determination
Trustees in attendance were Erin Archer, John Aoueille, Phillip Davis, Rob Aird and Keely Cano. Trustees Kim Flasch and Lauren White were absent.

Pledge of Allegiance and Moment of Silence
Chris Woehl, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. None

Closed Session -
Trustees recessed into Closed Session in accordance with Texas Government Code 551.001 et. seq.

Section 551.071 – For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including to discuss applicants for the role of Superintendent of Schools.

The board adjourned into closed session at 4:04 p.m.
The board returned to open session at 8:41 p.m.

Adjournment
There being no further action, the April 15, 2025 Board of Trustees' Special Called meeting adjourned at 8:41 p.m.

_____ _____
Erin Archer, President **Keely Cano, Secretary**

Minutes of Board Meeting
The Board of Trustees
Lake Travis Independent School District
A meeting of the Board of Trustees of Lake Travis Independent School District was held on April 16, 2025, beginning at 6:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 6:03 p.m.

Quorum Determination
Trustees in attendance were John Aoueille, Erin Archer, Phillip Davis, Keely Cano, Lauren White, Kim Flasch. Trustee absent was Rob Aird.

Pledge of Allegiance and Moment of Silence
Chris Woehl, led the Pledge of Allegiance. A moment of silence was then observed.

Recognition
- **2025 Greater Austin Regional Science and Engineering Fair – Elementary Division**
  Lake Travis ISD was well represented at the 2025 Greater Austin Regional Science and Engineering Fair (GARSEF) held February 22 at the Palmer Events Center. GARSEF is a STEM competition for 3rd-12th grade students from 14 Central Texas counties. The regional festival is one of the largest science fairs in Texas. Schools may participate in either the Elementary, Junior, or Senior divisions.

  Lake Travis ISD congratulates the following students whose projects were recognized at GARSEF:

  Lakeway Elementary School:
  - **Daniel Radchenko Avondo** – "What is the structure of DNA and which materials contain DNA?" (1st Place)
  - **Lilah Carroll** - "Which AI do math" (1st Place)
  - **Sofia Freitas** - "Which water bottles keep water cold for 24 hours?" (1st Place)
  - **Sawyer Lee** - "Does plant-based milk have the same amount of protein as dairy milk?" (1st Place)
  - **Dmitrii Malik** - "Why do popcorn seeds pop in heat and some don't?" (2nd Place)
  - **Nicholas Moreno** - "What model of paper airplane flies the farthest?" (1st Place)
  - **Maya Mudambi** - "Does age affect the range of frequencies human can hear?" (1st Place)
  - **Hayden Mueller** - "What liquid grows the largest gummy bear?" (1st Place)
  - **Pablo Hernandez Arthur Nava** - "Does the temperature of a golf ball change the distance the golf ball travels?" (1st Place)
  - **Brecken Nolz** - "What helps your eyes not to water when cutting onions?" (1st Place)
  - **Evan Randall** - "Does the temperature of the water you give a plant affect it's growth? (1st Place)
  - **Grace Scheider** - "What type of dog bowl causes dogs to eat slower?" (1st Place)
  - **Jonah Smith** - "Does talking nice or mean to a plant affect the growth?" (2nd Place)
  - **Charlotte Wickham** - "Which cup makes ice stay longer because the water is the coldest?" (1st Place)

  Serene Hills Elementary School:

- **Wyatt Brinker** - "Siding Science" (1st Place)
- **Bodie Grant** - "The Ice Age" (2nd Place)
- **Juliette Jones** - "No Gluten, No Problem" (2nd Place)
- **Michael McGrath** - "Magnet Strength" (1st Place)
- **Emma Pennington** - "The Race to Liquid" (1st Place)
- **Jax Ramos** - "The Metal Race" (1st Place)
- **Sander Solaas** - "Flying Fins" (1st Place)
- **Gabriel Virmani** - "Materials to Save Your Head" (1st Place)
- **Aubree Wojtewicz** - "Runaway Colors" (1st Place)

Special Recognition.

- **Lake Travis High School 2025 Scholastic Art and Writing Awards**
  The Lake Travis High School and Bee Cave Middle School art departments are pleased to announce that a total of 12 visual arts students have been recognized as Regional Medalists under the 2025 Scholastic Art and Writing Awards presented by the Alliance for Young Artists & Writers.

  Since 1923, the Scholastic Art & Writing Awards have honored the creative talents of young artists and writers across the country. With nearly 110,000 teens submitting over 310,000 original works of art and writing this year, this honor is a testament to our students' creativity, technical skill, and unique artistic voices. Their work was carefully selected by some of the foremost leaders in the visual and literary arts.

  Additionally, junior Claire Richardson has earned National Silver Keys for their outstanding work. Claire joins a prestigious legacy that includes notable alumni such as Amanda Gorman, Stephen King, Joyce Carol Oates, Andy Warhol, and Charles White. Claire's award-winning work will be published in Scholastic's online galleries at www.artandwriting.org. and will be featured in Yearbook 2025, a special publication highlighting National Medalists.

  In all, the following students have been recognized as Regional Medalists:

Presley Blake, LTHS	**Reyna Jiang**, LTHS
Sarah Cohn, LTHS	**Mateo Lopez**, LTHS
Hailey Davis, LTHS	**Elle Madison**, LTHS
Gavin Fry, BCMS	**Emily Mikolaycik**, LTHS
Carolyn Hall, LTHS	**Claire Richardson**, LTHS
Brenden Holt, LTHS	**Shrivas Sreepathy**, LTHS

  Lake Travis High School art teachers are Brianne Gette, Kayla Koslow, Bohye Na, Jennifer Nowzaradan, Caleigh Taylor, and Diane Wrinkle; Bee Cave Middle School art teachers are Sidney Hoffman and Shawna Martin.

Special Recognition.

- **Lake Travis High School - 2025 UIL State Solo-Ensemble Contest**
  Solo and Ensemble events in band, choir, and orchestra are held across all UIL music regions. Students achieving a Division One Rating at the region competition on a Class 1 solo or ensemble are eligible to advance to the UIL State Solo and Ensemble Contest scheduled for May 24 and May 26 in Austin.

These students work extensively on their pieces, often with private instructors, alongside their regular musical commitments. The adjudication at the state level is rigorous, typically conducted by college professors. These students have gone above and beyond the requirements of their music programs and continue to demonstrate the highest level of musicianship and commitment to their craft.

The following students are expected to perform at the State Solo-Ensemble Contest:

Andrew Glaeser (band)	Sophia Dunkerley (orchestra)
Armaan Sahota (band)	Amelia Echels (orchestra)
Jag Taylor (band)	Audrey Huang (orchestra)
Elise Bednarz (choir)	Shashvath Iyer (orchestra)
Gabrielle Anderson (orchestra)	Sydnee Lauritzen (orchestra)
Kate Assorgi (orchestra)	Stella Potashnik (orchestra)
Maggie Rose Berryhill (orchestra)	Kathryn Schanen (orchestra)
Jayama Biagini (orchestra)	Savannah Shapley (orchestra)
Maya Bruinsslot (orchestra)	Ankush Sudhakar (orchestra)
Catherine Chang (orchestra)	Sophia Dunkerley (orchestra)

Richard Hicks, Adam Poynor, and Anna Macias direct the Lake Travis High School band, choir, and orchestra, respectively.

Special Recognition.

- **Texas Color Guard Circuit State Championships, Scholastic Open Class Winterguard, JV Regional A Class Winterguard, and Cadet Class Winterguard**
  The Lake Travis High School Winterguard Open Class Guard earned 9th Place at the Texas Color Guard Circuit State Championships held March 29-30 at Reed Arena in College Station. The varsity Color Guard performed in the highly competitive Scholastic Open Class. Additionally, LTHS A Guard finished in 2nd Place in the Scholastic JV Regional A championships, and the LTISD Middle School Cadet Guard came in 2nd place in the Cadet Regional A category at championships. All teams had outstanding seasons, notably, the Cadet Guard earned two, 2nd Place trophies and a1st Place trophy in circuit contests.

  The Lake Travis High School Open Guard is comprised of the following students:

Elle Barnett	Bella Miller-Ray
Evangelin Bautista	Kenedy Morris
Sabrina Campbell	Grace Pantazopoulos
Lynette Canales	Sophia Rodriguez-Cobos
Marely Canales	Kasey Swenson
Yoselin Carbajal	Mercy Tovar
Kahlan Cuttion	Julianna Truden
Valeria Hernandez-Diaz	Addison Watts
Marlene Melgarejo	Sena Wolfe

The LTISD Cadet Guard is comprised of the following students:

Sonia Bakhshi	Kaylee Kidwell
Peyton Cozart	Olivia Micheo

Lana Golden	Natalie Morris
Anna Hartman	Emma Jo Scallon
Brielle Kelley	Lexi Wolledge

The LTHS JV Regional A Guard is comprised of the following students:

McKenna Beninga	Rosa Olguin
Ivanna Bonilla-Cruz	Hailie Rodgers
Camila Canales	Olivia Sanford
Emerson Canfield	Charlotte Urban
Evie Rew-Hunter	

The team's director is Michael Fairbrother, and he is assisted by Chris Maldonado.

Special Recognition.

- **Lake Travis High School - 2025 UIL Swimming and Diving State Meet**
  Two members of the Lake Travis High School Swimming and Diving team represented Lake Travis ISD at the 2025 UIL state meet held February 21-22 at University of Texas Swim Center.

  State qualifiers included:

  - Ben Liang - 200 Yard Individual Medley, 100 Yard Backstroke
  - Victor Teeters - 500 Yard Freestyle

  Holly Bowman is head coach of the Lake Travis High School Swimming and Diving team; she is assisted by Amelia Irsik.

Special Recognition.

- **Lake Travis High School – 2025 UIL Women's Soccer 6A-Division I State Runner-Up**
  On April 12, Lake Travis High School Women's Soccer fell short to Coppell High School 6-2 in the 2025 UIL Class 6A-Division I state final at Birkelbach Field in Georgetown.

  During their impressive run, the Cavaliers won 13 of their last 14 matches and finished the season 23-2-1. Lake Travis High School Women's Soccer is coached by Will Maloney. He is assisted by Emma Fox and Marcellus Walters.

  Lake Travis High School Women's Soccer Varsity Roster:

Adalyn Albright	Taylor Dimanlig	Hazel Papendrea
Addy Baker	Breckyn Ferrell	Banin Patterson
Bella Batchelor	Kayla Gibbons	Maya Ramirez
Ella Carr	Maddy Gordona	Aria Roldan
Sam Churchill	Mya Griffin	Shea Sander
Amelia Clark	Addie Hall	Alyssa Walden
Parker Clowe	Zoe Julius	Colette Whitsitt
Jaz Diaz	Riley McDonald	

Special Recognition.

- **LT High5 Award presented by High5 – Round 4 Recipients**
  Five times a year, three district employees will be presented with the "LT High5 Award presented by High5." The award recognizes outstanding service beyond self that positively impacts fellow colleagues, students, parents, and/or the Lake Travis community.

  All Lake Travis ISD employees are eligible for this award. There is no official nomination form. At any time throughout the school year, any Lake Travis ISD employee may nominate another employee for the award by simply sending an email directly to the District's Executive Director for Communications & Community Relations. Nominees are reviewed and award recipients are selected by the Superintendent's Cabinet.

  The following employees are recipients of the third round of the LT High5 Award presented by High5:

  - **Marissa Bell** - Dietician/Marketing Coordinator, Food and Nutrition Services
  - **Suzanne Kelbaugh** - Executive Asst. to the Superintendent, Central Office
  - **Kelsey Theis** - Lead School Psychologist

Special Recognition.

- **2024-2025 Aspiring Administrator Academy Participants**
  To support the development of our leadership pipeline, we invited staff interested in growing as leaders to apply for the 2025–2026 Aspiring Administrator Academy. The Academy aimed to help participants identify their leadership strengths, engage in targeted leadership development, and receive mentorship from experienced administrators. Participants had the option to shadow an administrator of their choice or pursue a passion project aligned with their leadership goals.

  Additional components included collaboration with the Cabinet leadership team and professional learning in areas such as effective school leadership, communication, school culture, instructional leadership, and teacher support.

  Participants also completed two book studies to strengthen their leadership skills. All participants read Monday Morning Leadership and selected one additional book from the following: Dare to Lead, Start With Why, or Radical Candor.

  Please join me in congratulating the following employees for completing the 2024-2025 Aspiring Administrator Academy:

  - John Maxfield, Bee Cave Elementary
  - Jessica Taylor, Bee Cave Elementary
  - Roland Reyes, Bee Cave Middle
  - Amy Puga, Curriculum & Instruction
  - Lauren Feist, Curriculum & Instruction
  - Marissa Bell, FANS
  - Jorgelina Marengo, Lake Travis Elementary
  - Bethany Bain, Lake Travis Elementary
  - Melissa Calerdeon-Rivas, Lake Travis Elementary
  - Blair DaGian, Lakeway Elementary
  - David Bammel, Lake Travis High
  - Jessica Lani, Rough Hollow Elementary
  - Laura Browning, Serene Hills Elementary

Special Recognition.

- **Lake Travis ISD School Board Trustee Kim Flasch**
  Kim Flasch was elected to Place 1 on the Lake Travis Independent School District Board of Trustees in May 2013. During her tenure on the school board, Ms. Flasch has been an exemplary ambassador for the Lake Travis ISD community by supporting the administration and district staff, fostering accountability and continuous improvement, and advocating for the benefit of all students. After serving four consecutive terms, Ms. Flasch did not to seek re-election in 2025.

  Serving without compensation, Ms. Flasch has witnessed the district's student enrollment almost double in size during her time on the school board. She has been at the forefront of efforts to accommodate that growth, in particular through the passage of the district's 2017, 2022, and 2023 bonds totaling more than $1 billion for new construction and upgrades to district facilities, as well as voter-approved tax rate elections in 2017 and 2021 to generate approximately $5 million in annual state revenue.

  Ms. Flasch and her husband Robert have two children, Branagan and Caleb—both of whom are graduates at Lake Travis High School. On behalf of the Lake Travis ISD family, we thank Ms. Flasch for her 12 years of service as a school board trustee and wish her much success in her future endeavors.

Special Recognition.

Kim Flasch left the meeting at 6:59 p.m. after she was recognized for her service.

Public Comments/Citizen Participation

1. Ashley Rew Hunter – SPED
2. Kristen Blauvelt – Budget Cuts Fine Arts Aides
3. Megan Hinojosa – Fine Arts Aides
4. Adrian Akins – Elimination of Fine Arts Aides
5. Alissa Tilford – Art Aide Retention
6. Maria McPhail – Budget
7. Cindy Decker – Read SPED Letter
8. Jennifer Fleck – Due Process and Bond Work

Public Hearing

- **School Health Advisory Council - Human Sexuality Curriculum Materials for Consideration Public Hearing**
  Pursuant to Texas Education Code (TEC) §28.004, each school district is required to establish a local School Health Advisory Council (SHAC) to assist the district in ensuring that local community values are reflected in the district's health education instruction, including instruction relating to human sexuality. The statute further prescribes the responsibilities of the SHAC, including the review and recommendation of curriculum materials pertaining to human sexuality instruction.

  In accordance with the statutory requirements, the SHAC has conducted a review of human sexuality instructional materials and is presenting its recommended materials for consideration. As required by TEC §28.004(j), prior to the adoption of any such curriculum materials, the Board of Trustees must hold a public hearing to allow for community input and public comment regarding the proposed instructional resources.

This public hearing serves to fulfill the statutory obligation to ensure transparency in the curriculum adoption process and to afford parents and stakeholders the opportunity to review and provide feedback on the instructional materials under consideration. The hearing is a critical component of the district's compliance with state law and supports the Board's role in safeguarding the educational and health interests of students in alignment with local community standards.

Public Speakers

1. **No Public Comment**

Public Hearing.

Presentation / Discussion Items

- **Campus Presentation - West Cypress Hills Elementary School**
  The purpose of this presentation is to provide the Board of Trustees and the community with a snapshot of the impactful work being done by West Cypress Hills Elementary. This includes highlighting significant achievements by students, staff, and families that contribute to the overall success of the school community.

  The expected outcome of this presentation is to strengthen the connection between the campus and the community and give the Board of Trustees the opportunity to engage in conversations with the campus principal that support the success of all stakeholders.

This item was for presentation/discussion only; no action was requested.

At 8:13 p.m. Lauren White asked President Erin Archer to hear Items 8, 9 and 10 out of order –

A MOTION was made by Trustee Lauren White and seconded by Trustee Keely Cano to suspend the rules to consider items 8, 9, and 10 (including our scheduled grievance hearings) at this time, out of the listed order.

The motion was passed by a vote of 5-0.

Level Three Appeal of Parent/Student Grievance

Pursuant to Board Policy FNG, the Board may hear the Level III grievance through either oral presentation to the Board or upon written submission (which means based on the written record of the Trustees have been provided). The board convened in closed session pursuant to Texas Government Code Section 551.071 (Consultation with Attorney) for the purpose of discussing how the Board will hear the grievance.

Trustees recessed into Closed Session at 8:15 p.m.

Closed Session

Time reconvened 8:29 p.m.

Open Session

- Erin Archer and the Board returned to the boardroom to rule on whether the Level Three grievances submitted by Kathryn Sartor and Melody Zare will be heard based on oral presentation or upon written submission.

A MOTION was made by Trustee Lauren White and Seconded by Trustee Phil Davis to hear the complaints before the Board tonight through oral presentations.

The motion was passed by a vote of 5 - 0.

Closed Session

Trustees recessed into a closed session at 8:30 p.m. to discuss the grievance and other matters in closed session, under Texas Government Code 551.071, consultation with attorney, 551.072 - property, and 551.074 - personnel matters.

- **Closed Session in accordance with Texas Government Code 551.001 et. seq.**
  Section 551.071 - For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law, including private consultation with the Board's attorney to provide legal advice regarding Level Three grievances pending before the Board; Cause No. C-1-PB-24-002575, Lake Travis ISD v. John Craig Hert, Probate Ct. No. 1, Travis County; and the proposed adoption of a resolution authorizing Lake Travis ISD to enter into a Local On-System Improvement Project with Texas Department of Transportation.

  Section 551.072 - For the purpose of discussing the purchase, exchange, lease, or value of real property, including the possible purchase of real property, including a tract of land containing 2.6633 acres out f the Joshua B. Sharpless Survey No 365, Abstract No. 2124, in Travis County, Texas (Hert Tract).

  Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including discussion of multiple Level Three grievance hearings.

Open Session

Time reconvened 12:16 a.m. on April 17, 2025

- The Board has heard a Level Three appeal originally filed on November 13, 2024, by Kathryn Sartor which was conducted in closed session pursuant to Section 551.074 of the Texas Government Code. In accordance with Chapter 551 of the Texas Government Code, any action regarding this matter must be taken in open session.

A MOTION was made by Trustee Keely Cano and Seconded by Trustee Phillip Davis that the Board deny the Level Three Appeal submitted originally on November 13, 2024, by Kathryn Sartor, thereby upholding the administration's decision.

The motion was passed by a vote of 5- 0.

- The Board has heard a Level Three appeal filed by Kathryn Sartor from a grievance originally submitted on March 11, 2025. This hearing was conducted in closed session pursuant to Section 551.074 of the Texas Government Code. In accordance with Chapter 551 of the Texas Government Code, any action regarding this matter must be taken in open session.

A MOTION was made by Trustee Phillip Davis Seconded by Trustee KeelyCano that the Board deny the Level Three Appeal submitted by Kathryn Sartor on March 11, 2025, thereby upholding the administration's decision.

The motion was passed by a vote of 5 - 0.

- The Board has heard a Level Three appeal filed by Melody Zare from a grievance originally submitted on June 21, 2024. This hearing was conducted in closed session pursuant to Section 551.074 of the Texas Government Code. In accordance with Chapter 551 of the Texas Government Code, any action regarding this matter must be taken in open session.

A MOTION was made by Trustee Keely Cano Seconded by Trustee Lauren White that the Board grant the request in part and deny the request in part, modifying the request for relief as follows. In addition to the remedies previously granted at Levels One and Two, the superintendent or designee shall conduct an organizational review, in collaboration with a third-party consultant, focusing on campus investigative procedures and best practices for collaboration between campus administrators and district police officers.

The motion was passed by a vote of 5 - 0.

- **2024 – 2025 Fine Arts Update**
  Shannon Gill, Director of Fine Arts, provided the Board with an update on 2024-2025 Fine Arts Program at LTISD.

This item was for presentation/discussion only; no action was requested.

- **Board Update on Special Services**
  Jennifer Freeman, Executive Director of Special Services, presented an update on Special Services, which includes Special Education, Section 504, Dyslexia, and Multi-Tiered Systems of Support (MTSS).

This item was for discussion/presentation only; no action was requested.

- **Board Notification under Board Policy CH (LOCAL) – IXL Digital Learning Platform**
  The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs $100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases that cost $100,000 or more, but shall subsequently report them to the Board:

  1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law.
  2. A purchase made through a cooperative purchasing program, in accordance with law.
  3. A purchase made through a state purchasing program that satisfies the District's obligation for competitive purchasing;
  4. A purchase for produce or fuel.

  Lake Travis ISD has the following proposed 2025-2026 budgeted purchase through the TIP Cooperative that requires Board notification:
  - Vendor: IXL Learning

- Product: IXL is a personalized digital learning platform that offers a suite of resources to support student learning through targeted skills practice, assessment & analytics. Features like real-time diagnostics, adaptive learning technology, and instructional resources help to support success for every learner. In Lake Travis ISD, IXL will be used to support learners from K-12.
- Price: $221,000 (Year 1 - SY 25-26 budget); $166,275 (Year 2); $166,275 (Year 3)

This item was for presentation/ discussion only; no action was requested.

- **March 2025 Monthly Financial Report - Statement of Revenues and Expenditures, Balance Sheet, Tax Statement and 2018/2023/2024 Capital Projects Report**
  Pam Sanchez, Assistant Superintendent of Business Services, presented the following documents:

  1. Statement of Revenues and Expenditures – March 2025
  2. Balance Sheet – March 2025
  3. Tax Statement – March 2025
  4. 2018/2023/2024 Capital Projects Report – March 2025

This item was for presentation/discussion only; no action was requested.

- **Food and Nutrition Meal Prices for 2025-2026**
  To provide an informational update to the Board and community regarding the student meal prices for next school year. The district increased breakfast and lunch meal prices by $0.10 each for the 2024-2025 school year. Since then, food costs continue to rise, and this trend is expected to continue into the 2025-2026 school year. Prior to the current school year's price increase, the district had not adjusted breakfast meal prices in six years and had not adjusted lunch meal prices in four years. Although the school year 2025-2026 USDA paid lunch equity tool has not been released, we know that the USDA paid lunch equity meal price is $3.84, and the district's current average lunch meal price is $3.56. Therefore, it is recommended that the district increase both breakfast and lunch meal prices for the 2025-2026 school year by $0.10 each.

This item was for discussion/presentation only; action will be requested at the May 21, 2025 Board meeting.

- **Cooperative Program Management Fees Report**
  A law added by Acts 2007, 80th Legislature, requires that school districts disclose the amounts spent on purchasing cooperative fees on an annual basis. Specifically, it states:

  Sec. 44.0331. MANAGEMENT FEES UNDER CERTAIN COOPERATIVE PURCHASING CONTRACTS.

  (a) A school district that enters into a purchasing contract valued at $25,000 or more under Section 44.031(a)(5), under Subchapter F, Chapter 271, Local Government Code, or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

  (b) The amount, purpose, and disposition of any fee described by Subsection (a) must be presented in a written report and submitted annually in an open meeting of the board of trustees of the school district. The written report must appear as an agenda item.

  (c) The commissioner may audit the written report described by Subsection (b).

The fees paid by Lake Travis ISD for cooperative purchasing contracts in FY 2023-2024 are reported on the attached report.

This item was for discussion/presentation only; no action was requested.

- **2024 Board Training Report**
  Annually, each local Board of Trustees shall announce the name of each Board member who has completed the required continuing education, who has exceeded the required hours of continuing training and who is deficient in the required continuing education as of the date of the meeting. Under State Board of Education Rule, completing required continuing education each year of service is a basic obligation and expectation of any sitting board member.

  As Board President, I am required to announce the name of each member who as of the member's anniversary or election or appointment to the board:
  - Has completed the required continuing education;
  - Has exceeded the required continuing education; and
  - Is deficient in meeting the required continuing education.

  The requirements for training are measured as of the first anniversary of the date of the trustee's election or appointment or two-year anniversary of his or her previous training as applicable.

  There are nine training areas for board member continuing education:

  1. Local District Orientation
  2. Introduction to the Texas Education Code
  3. Open Government
  4. School Safety
  5. Cybersecurity
  6. Post-Legislative Update to the Texas Education Code – Not Applicable
  7. Child Abuse Prevention
  8. Evaluating and Improving Student Outcomes
  9. Team Building
  10. Additional Continuing Education (10 hrs. New Trustee and 5 hrs. Trustee)

  To the extent applicable to each board member, I will announce the completion or deficiency as to required training.

  At the conclusion of this announcement, I will announce any board member's training in excess of the continuing education requirement.

  <u>School Safety</u>
  The following board members have completed the School Safety training requirement: Kim Flasch, John Aoueille, Lauren White, Keely Cano, Phillip Davis, Rob Aird and Erin Archer.

  <u>Cybersecurity</u>
  The following board members have completed the Cybersecurity training requirement: Kim Flasch, John Aoueille, Lauren White, Rob Aird, Phillip Davis, Keely Cano, and Erin Archer.

  <u>Child Abuse Prevention</u>

This requirement is needed every 2 years. The following board members have completed the Child Abuse Prevention requirement: Kim Flasch, John Aoueille, Lauren White, Rob Aird, Phillip Davis, Keely Cano, and Erin Archer.

Evaluating and Improving Student Outcomes
This requirement is needed every 2 years. The following board members have completed the Evaluating and Improving Student Outcomes requirement: Kim Flasch, John Aoueille, Lauren White, Rob Aird, Phillip Davis, Keely Cano, and Erin Archer.

Team Building
The following board members have completed the Team of 8 training requirement: Kim Flasch, John Aoueille, Lauren White, Rob Aird, Phillip Davis, Keely Cano, and Erin Archer.

Additional Continuing Education
The following board members have completed the additional continuing education requirement: Kim Flasch, Lauren White, Phillip Davis, Rob Aird, Keely Cano, and Erin Archer.

The following board member is deficient in meeting the additional continuing education requirements: John Aoueille

Trustees that have Exceeded Required Continuing Education
Trustee Phillip Davis exceeded the required amount of continuing education training by 5.5 additional hours.

Trustee Kim Flasch exceeded the required amount of continuing education training by .75 additional hours.

Trustee Lauren White exceeded the required amount of continuing education training by 16.5 additional hours.

Trustee Erin Archer exceeded the required amount of continuing education training by 15 additional hours.

Trustee Rob Aird exceeded the required amount of continuing education training by 16.25 additional hours.

This item was for discussion/presentation only; no action was requested.

Consideration Items

- **Interlocal Agreement with The University of Texas at Austin, The Meadows Center for Preventing Educational Risk as an Authorized Provider for the Texas Reading Academies**
  House Bill 3, passed by the 86th Texas Legislature in 2019 and updated by the 87th Texas Legislature in 2021, requires all kindergarten through third grade teachers and principals to complete the Texas Reading Academies by the end of their second school year employed by a school district in this capacity. The Texas Education Agency has designated Authorized Providers to grant districts and educators access to the Reading Academies. Lake Travis ISD has chosen to continue with The Meadows Center at UT Austin as its Authorized Provider for the 2025-26 school year.

A MOTION was made by Trustee Keely Cano and seconded by Trustee John Aoueille to approve an Interlocal Cooperation Contract with the University of Texas at Austin and authorize the Director of Purchasing, in her absence, the Superintendent or other designee, to execute all related documents.

The motion passed by a vote of 5 - 0.

- **Depository Contract Extension for 2025-2027**
  Under Texas Education Code Section 45.205(b), a school district and the district's depository bank may agree to extend a depository contract for three additional two-year terms. This extension constitutes the parties' second two-year term. Prosperity Bank has provided these services to Lake Travis Independent School District for the past 15 years. They have provided a high level of service to the district, competitive interest rates on deposits and will continue to waive all related bank fees.

A MOTION was made by Trustee Keely Cano and seconded by Trustee John Aoueille to adopt the Board Resolution Extending the Depository Contract for an additional two-year term from September 1, 2025 through August 31, 2027

The motion passed by a vote of 5- 0.

- **Selection of American Constructors as Contractor for JOC #23-130 for Lake Travis Elementary School Fire Alarm Panel Replacement**
  The District administration is recommending American Constructors as the General Contractor for the Lake Travis Elementary School fire alarm panel replacement project. It is expected that the contract with American Constructors for this project will exceed $100,000. According to Board Policy CV (LOCAL), the Board must approve construction contracts valued at or above $100,000.

  The Cost of Work for JOC #23-130 includes the following campuses:
  - Installation of new fire alarm control panels and voice audio/visual devices
  - Replacement of emergency lighting ballast and fixtures

A MOTION was made by Trustee Keely Cano seconded by Trustee Phillip Davis to adopt the selection of American Constructors as Contractor for JOC #23-130 for Lake Travis Elementary School fire alarm panel replacement.

The motion passed by a vote of 5- 0.

Consent Agenda

1. Resolution to Approve the Agreement for a Local On-System Improvement Project Between Texas Department of Transportation and Lake Travis ISD for the Private Driveway Intersection
2. Grant Waterway Setback Protective Easement to Travis County on Lake Travis ISD Private Driveway (Phase 1) Site
3. Grant Waterway Setback Protective Easement to Travis County on Lake Travis ISD High School #2 (Phase 1) Site
4. Grant Permanent Water Quality Controls Protective Easement to Travis County on Lake Travis ISD Private Driveway (Phase 1) Site

5. Grant Permanent Water Quality Controls Protective Easement to Travis County on Lake Travis ISD High School #2 (Phase 1) Site
6. Local Policy Updates
    a. CAA(LOCAL): Fiscal Management Goals and Objectives - Financial Ethics
    b. CDA(LOCAL): Other Revenues - Investments
    c. CE(LOCAL): Annual Operating Budget
    d. CY(LOCAL): Intellectual Property
    e. DH(LOCAL): Employee Standards of Conduct
    f. EHB(LOCAL): Curriculum Design - Special Programs
    g. EHBB(LOCAL): Special Programs - Gifted and Talented Students
    h. FFG(LOCAL): Student Welfare - Child Abuse and Neglect
    i. GKA(LOCAL): Community Relations - Conduct on School Premises
7. Off Campus Physical Education (OCPE) Providers
8. Instructional Materials Allotment – 2025-2026 TEKS Certification
9. Minutes, March 26, 2025 Regular Board Meeting
10. Minutes, April 2, 2025 Budget Workshop

A MOTION was made by Trustee John Aoueille and seconded by Trustee Keely Cano to approve the consent agenda items as presented.

The motion passed by a vote of 5 - 0.

Consideration of other items Arising from Closed Session

A MOTION was made by Trustee Keely Cano and seconded by Trustee John Aoueille to approve the negotiated settlement for the purchase of a tract of land containing approximately 2.6633 acres out of the Joshua B, Sharpless Survey No. 365, Abstract No. 2124, in Travis County Texas (the "Hert Tract") for a total purchase price of $655,000.00. I further move that the Board delegate authority to the Superintendent or designee to execute any and all documents necessary to effectuate the purchase, including any documents required for closing.

The motion passed by a vote of 5-0.

Information Items

- **2025 - 2026 Board Meeting Dates**

This item was for information only; no action was requested.

Adjournment

There being no further action, the April 16, 2025 Board of Trustees' meeting adjourned on April 17, 2025 at 1:17 a.m.

_____ _____

Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on April 21, 2025, beginning at 5:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 5:00 p.m.

Quorum Determination
Trustees in attendance were Erin Archer, Kim Flasch, Rob Aird and Keely Cano. Trustees absent were Phil Davis, Lauren White and John Aoueille.

Pledge of Allegiance and Moment of Silence
Chris Woehl, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. None

Closed Session
Trustees recessed into Closed Session in accordance with Texas Government Code 551.001 et. seq.

Section 551.071 – For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including to interview candidates for the role of Superintendent of Schools.

The board adjourned into closed session at 5:01 p.m.
The board returned to open session at 9:28 p.m.

Adjournment
There being no further action, the April 21, 2025 Board of Trustees' Special Called meeting adjourned at 9:28 p.m.

_____ _____
Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on April 22, 2025, beginning at 4:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 4:00 p.m.

Quorum Determination
Trustees in attendance were Erin Archer, Lauren White, Kim Flasch and Keely Cano. Trustees absent Rob Aird, John Aoueille and Phillip Davis.

Pledge of Allegiance and Moment of Silence
Chad Crowson, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. None

Closed Session
Trustees recessed into Closed Session in accordance with Texas Government Code 551.001 et. seq.

Section 551.071 – For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including to interview candidates for the role of Superintendent of Schools.

The board adjourned into closed session at 4:01p.m.
The board returned to open session at 8:28 p.m.

Adjournment
There being no further action, the April 22, 2025 Board of Trustees' Special Called meeting adjourned at 8:28 p.m.

_____ _____

Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on April 30, 2025, beginning at 5:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 5:10 p.m.

Quorum Determination
Trustees in attendance were Erin Archer, Lauren White, Kim Flasch and Keely Cano. Trustees absent Rob Aird, John Aoueille and Phillip Davis.

Pledge of Allegiance and Moment of Silence
Chris Woehl, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. None

Closed Session
Trustees recessed into Closed Session in accordance with Texas Government Code 551.001 et. seq.

Section 551.071 – For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including to interview candidates for the role of Superintendent of Schools.

The board adjourned into closed session at 5:11p.m.
The board returned to open session at 8:26 p.m.

Adjournment
There being no further action, the April 30, 2025 Board of Trustees' Special Called meeting adjourned at 8:26 p.m.

_____ _____

Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on May 1, 2025, beginning at 5:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 5:05 p.m.

Quorum Determination
Trustees in attendance were Erin Archer, Phillip Davis, John Aoueille, Kim Flasch and Keely Cano. Trustees absent Rob Aird and Lauren White.

Pledge of Allegiance and Moment of Silence
Susan Fambrough, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. None

Closed Session
Trustees recessed into Closed Session in accordance with Texas Government Code 551.001 et. seq.

Section 551.071 – For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including to interview and discuss candidates for the role of Superintendent of Schools.

The board adjourned into closed session at 5:06 p.m.
The board returned to open session at 11:01 p.m. and Lauren White was present.

Consideration of Items Arising from Closed Session

Consideration of and Possible Action to Name Lone Finalist for Superintendent of Schools

A MOTION was made by Keely Cano and seconded by Lauren White the Board of Trustees name Dr. Curtis Null as the lone finalist for Superintendent of Schools for Lake Travis ISD; authorize the Board President, with advice of legal counsel, to negotiate a proposed employment contract with the lone finalist; and direct that the negotiated draft be brought back to the Board for consideration and possible approval no sooner than the 22nd day after today's date, consistent with all statutory requirements.

The motion passed by a vote of 6-0.

Adjournment

There being no further action, the May 1, 2025 Board of Trustees' Special Called meeting adjourned at 11:04 p.m.

_____ _____

Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on May 14, 2025, beginning at 2:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 2:02 p.m.

Quorum Determination
Canvassing and Election only requires 2 Trustees to be present.
Trustees in attendance were Erin Archer, Rob Aird and Lauren White. Trustees absent were Phil Davis, Keely Cano, Kim Flasch and John Aoueille.

Pledge of Allegiance and Moment of Silence
Marco Alvarado, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. None

Consideration Item
- **Consideration of and Request for Approval of Order Canvassing the May 3, 2025 Board of Trustees Election Returns**
  The Order which canvasses the May 3, 2025 Board of Trustee Election is presented for approval. the tabulation of the results of the Election was as follows:

Trustee, Place 3	
Erin Archer	4,787 Votes
Jessica Howard	2,831 Votes
Trustee, Place 4	
Jonathan Bove	4,328 Votes
John Severance	4,056 Votes
Trustee, Place 5	
Craig Cancienne	4,050 Votes
Kris Woodcock	4,347 Votes

  Incorporated into the Order is a finding, declaration, and order that the following candidates were elected to the office listed below:

Erin Archer	Trustee, Place 3
Jonathan Bove	Trustee, Place 4
Kris Woodcock	Trustee, Place 5

A MOTION was made by Lauren White and seconded by Rob Aird that the Board of Trustees adopt the Order canvassing returns and declaring the results of the trustee election, which is before the Board.

The motion passed by a vote of 3-0.

Adjournment

There being no further action, the May 14, 2025 Board of Trustees' Special Called meeting adjourned at 2:04 p.m.

Erin Archer, President	**Keely Cano, Secretary**

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Board Notification under Board Policy CH (LOCAL) – Lake Travis High School Band Instruments

RECOMMENDED ACTION
For Information Only.

RATIONALE
The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs $100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases that cost $100,000 or more, but shall subsequently report them to the Board:

1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law.
2. A purchase made through a cooperative purchasing program, in accordance with law.
3. A purchase made through a state purchasing program that satisfies the District's obligation for competitive purchasing;
4. A purchase for produce or fuel.

Lake Travis ISD has a budgeted purchase that requires Board notification for band instruments in the amount of $133,702.45 for Lake Travis High School. The band instruments are part of the replacement cycle for the high school and middle school programs.

BUDGET PROVISIONS
2023 Bond Program - $133,702.45

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Brad Goerke – Director of Finance
Cristy Soares – Director of Purchasing

ATTACHMENTS
None

MEETING DATE
May 21, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Board Notification under Board Policy CH (LOCAL) – Fleet Copiers and Service

RECOMMENDED ACTION
For Information Only.

RATIONALE
The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs $100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases that cost $100,000 or more, but shall subsequently report them to the Board:

1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law.
2. A purchase made through a cooperative purchasing program, in accordance with law.
3. A purchase made through a state purchasing program that satisfies the District's obligation for competitive purchasing;
4. A purchase for produce or fuel.

Lake Travis ISD has a budgeted purchase that requires Board notification for 27 Canon copiers in the amount of $171,828.62 representing year 2 of the replacement cycle. The copiers are replacing older and high use machines at Serene Hills Elementary, Rough Hollow Elementary, Hudson Bend Middle School and Lake Travis High School Athletics Department.

BUDGET PROVISIONS
2023 Bond Program - $149,998.61

RESOURCE PERSONNEL
Pam Sanchez – Assistant Superintendent of Business Services
Brad Goerke – Director of Finance
Cristy Soares – Director of Purchasing

ATTACHMENTS
None

MEETING DATE
May 21, 2025

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Board Notification Under Board Policy CH (LOCAL) - Technology Bond Expenditure Report

RECOMMENDED ACTION
For Information Only.

RATIONALE
The 2023 Bond Program provided funding for purchasing technology items, such as classroom educational and instructional equipment, infrastructure, and operational equipment. Decisions about educational technology and infrastructure equipment have been discussed, planned, and vetted with the district stakeholders and the District's Long Range Facilities Planning Committee. Per Board Policy CH (LOCAL), the following purchases made via a cooperative purchasing program of $100,000 or more are required to be presented to the Board for notification:

District-wide video surveillance system and equipment, cameras, storage, servers, software, licensing, and turnkey installation were purchased to replace obsolete equipment. This purchase was made through Technology for Education (TFE) via the interlocal purchasing system (TIPS) cooperative contract and volume purchase pricing for the total amount of $854,751.46.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Chris Woehl - Executive Director for Technology and Information Services

ATTACHMENTS
None

MEETING DATE
May 21, 2025