

Regular Meeting

Monday, March 7, 2022 5:30 PM

L.F. Raynes Education, 400 West Lewis St., Crandall, TX 75114

1. Call to Order and Declaration of Quorum

2. Closed Session

2.A. Personnel (Texas Government Code § 551.074)

2.A. Discuss hiring, resignations, terminations, and reassignments.

3. Open Session

4. Invocation, Presentation of Colors, Pledge of Allegiance and Welcome Visitors

5. Public Participation

6. Staff Recognition

6.A. New Employees

Presenter: Holly Keown

7. Consent Items

7.A. Consider approval of the minutes from 2-14-22 Regular Board Meeting.

Presenter: Jennifer Johnson

7.B. Class Size Exception

Presenter: Anjanette Murry

7.C. Teacher Contract Renewals

Presenter: Holly Keown

7.D. CISD Pilot Texas Tech Doctoral Program

Presenter: Holly Keown

7.E. Police Department MOU on Policies & Procedures

Presenter: Chief Taylor

7.F. County MOU on Shelter & Mass Care Activities

Presenter: Keith Chapman

8. Information Items

8.A. Middle School Construction Update

Presenter: Scott Stewart

8.B. College and Career Readiness Update

Presenter: Angela Nolan

8.C. Student Workers (COVID)

Presenter: Christy Starrett

8.D. 2022-2023 Schedules for MS/HS

Presenter: Carri Eddy

8.E. 2022-2023 School Start/End Times

Presenter: Carri Eddy

8.F. Staffing for Freshman Center

Presenter: Holly Keown

8.G. Education Foundation Update

Presenter: Kimberly Bramhall

8.H. Communication Update

Presenter: Chris Moore

9. Action Items

9.A. Ballot Position Drawing

Presenter: Chris

	Moore
9.B. Missed School Days Waiver	Presenter: Anjanette Murry
9.C. Approval of Resolution on Employee Make Up Days	Presenter: Carri Eddy
9.D. Approval of Resolution for SHAC to Recommend Curriculum	Presenter: Carri Eddy
9.E. Approval of 2022-23 School Calendar	Presenter: Carri Eddy
9.F. Culture of Voting Resolution	Presenter: Chris Moore
9.G. ESSER Fund Teacher Retention	Presenter: Anjanette Murry
9.H. Approval of Construction Manager-Agent Contract with Gallagher Construction	Presenter: Mike White
10. Financial Report	
11. Adjournment	

Board Secretary

Meet the New Pirate

Angeline Williams

Special Ed Coordinator
10 years in education
Previously employed at
Cityscape Schools



Master in Educational
Administration from MO-Park
University

Doctorate in Social Justice
Leadership from MO-
University of Missouri

Mickey Smith

Payroll Specialist
25 years payroll experience
Previously employed at
Malakoff ISD



HS Graduate from Grand
Prairie ISD

Chase Dunlap

School-Based Law
Enforcement Office

7 years police force experience
Previously employed by Denton County



Colin Simpson

School-Based Law
Enforcement Office

3 years police force experience
Previously employed by Terrell PD



Michael Williams

School-Based Law
Enforcement Office

31 years experience
Previously employed by Crandall PD

No picture
available
Starts March 9

Dr. Lauren Chism

Executive Director of
Student Support Services
21 years in education
Previously employed at
Mesquite ISD



Bachelor's Degree from of
Dallas Baptist University
Master's of Education from
Texas A&M University -
Commerce
Doctorate - Southern
Methodist University





Crandall Independent School District Board of Trustees

Board Meeting Date:

March 7, 2022

Agenda Item:

Minutes from previous Board Meetings

Agenda Section:

Consent

Administrator Responsible:

Jennifer Johnson

Summary/Background Information: Minutes recorded on February 14, 2022, Regular Board Meeting.

Administrative Recommendation: Administration recommends approval of minutes listed above.

**Minutes of Regular Meeting
The Board of Trustees Crandall ISD**

A Regular Meeting of the Board of Trustees of Crandall ISD was held Monday, February 14, 2022, beginning at 5:30 PM in the Board Room, L.F. Raynes Education Center, 400 W. Lewis St., Crandall.

CALL TO ORDER AND DECLARATION OF QUORUM

Board Members Present: Rick Harrell, Jennifer Hiser, Amy Barber, Dr. Sharon Long, Stacie Warren (Mike Wood was absent)

CLOSED SESSION TIME: 6:07 PM

Texas Government Code Section 551.074

- Personnel

OPEN SESSION: 7:14 PM

Invocation, Presentation of Colors, Pledge of Allegiance and Welcome Visitors

Staff Members Present: Holly Keown, AJ Murry, Mike White, Christy Starrett, Chris Moore, Carri Eddy, Scott Stewart, Kimberly Bramhall, Jennifer Johnson

PUBLIC PARTICIPATION

No public participation this meeting.

STAFF APPRECIATION

Mr. Chris Moore presented the Superintendent's Award to Stephanie Bass for her hard work at CHS.

CONSENT ITEMS

The following consent items were reviewed.

- Consider approval of the minutes of previous meetings
Minutes from Regular Board Meeting, January 24, 2022
- Administrative Contract Renewals

Administration recommends the renewal of the 2022-23 administrative contracts.

Motion was made by Jennifer Hiser and seconded by Stacie Warren to approve consent items.
Motion passed 5-0.

INFORMATION ITEMS

Middle School Construction Update

Presenter: Scott Stewart

Notes: Reviewed monthly project update on CISD's new Middle School.

Doctorate Incentive Program

Presenter: Dr. Holly Keown

Notes: Dr. Keown presented a proposal with Options A, B, C and D for financial support for CISD participants through the Texas Tech Doctoral program. This would be for the current cohort.

Education Foundation Update

Presenter: Kimberly Bramhall

Notes: The Crandall Education Foundation has joined the Kaufman County Chamber of Commerce. The annual Gala will be held in April and it currently seeking sponsors.

Communications Update

Presenter: Chris Moore

Notes: Mr. Moore presented a video recapping the year so far, including the 100th day of school and ending with the CHS Cheerleaders winning Nationals.

COVID Update

Presenter: Christy Starrett

Notes: COVID numbers have decreased and after-school COVID testing is down to less than 10 tests per day since Feb. 1, 2022. Twenty-five vaccinations were given at the last Clinic on Feb. 1st. CISD is partnering with Forney ISD to have Vaccinations on Feb. 17th and March 17th at the Forney Administration Building.

Dress Code Update

Presenter: Dr. Holly Keown and

Notes: Dress code data from the 3rd 6 weeks was presented. The biggest issue involves students wearing their name badges.

Portable Building Update

Presenter: Scott Stewart

Notes: A total of 13 portable buildings are being installed across the district. Dietz-7 , Noble-Reed - 2 and Martin Elementary - 2. The final 2 will be at the CHS baseball/softball complex for future use, if necessary. Currently there are 5 in place. Portables will go into use in the Fall 2022.

ACTION ITEMS

Consider and take action on an order calling a bond election in the District on May 7, 2022

Presenter: Chris Moore

During the January 24, 2022, Board Meeting, the Facilities Planning Committee presented their recommendation to the Board for a bond election in May 2022 to address the district facility and capital needs.

Administration recommends approval of the Order calling a bond election in the district on May 7, 2022.

A motion was made by Jennifer Hiser and seconded by Stacie Warren to approve an order calling a bond election in the District on May 7, 2022. Motion passed 5-0.

Consider all matters incident and related to the issuance and sale of “Crandall Independent School District Unlimited Tax School Building Bonds, Series 2022”, including the adoption of an order authorizing the issuance of such bonds and establishing procedures and delegating authority for the sale and delivery of such bonds

Presenter: Mike White and Derek Honea

The district has \$30,000,000 in remaining voter-approved bond authorization from the 2017 election. These remaining bonds would be sold to fund construction of Elementary #6 (partial), high school weight room addition, and Freshman Center improvements.

Administration recommends approving of the Order for the Series 2022 bonds as presented.

Motion was made by Dr. Sharon Long and seconded by Amy Barber to adopt an order authorizing the issuance and sale of “Crandall Independent School District Unlimited Tax School Building Bonds, Series 2022”. Motion passed 5-0.

Consider all matters incident and related to the adoption of a resolution expressing official intent to reimburse costs of projects

Presenter: Mike White

Administration recommends that the Board approve the attached resolution to allow for the general fund to be reimbursed for any incurred construction costs related to the proposed bond.

Motion was made by Stacie Warren and seconded Dr. Sharon Long by to adopt a resolution expressing official intent to reimburse costs of projects. Motion passed 5-0.

Compensation Plan

Presenter: Dr. Holly Keown

Administration recommends approval of changes in the compensation plan discussed in January 2022 Regular Board Meeting.

This change would make the pay at CISD competitive with wages in surrounding districts.

Motion was made by Jennifer Hiser and seconded by Dr. Long to approve the change in compensation plan. Motion passed 5-0.

Grow Your Own Teacher Program

Presenter: Dr. Holly Keown

Administration seeks to approve reimbursement dollar amount for tuition for courses taken through Texas A&M University – Commerce for the Grow Your Own Teacher program.

The Board would like to have an annual report on the progress of this program so they can evaluate the success.

Motion was made by Dr. Sharon Long and seconded by Stacie Warren to approve the Grow Your Own Teacher Program, Option A, as presented at the Feb. 14, 2022, board meeting. Motion passed 5-0.

CEF Grant Check Approval

Presenter: Kimberly Bramhall

Administration recommends approval of grant awards to be presented Feb. 18, 2022, starting at 8:30 AM.

Motion was made by Amy Barber and seconded by Jennifer Hiser to approve the CEF grant awards as presented. Motion passed 5-0.

MONTHLY FINANCIALS

Presenter: Mike White

Notes: Mike White reviews the following:

- Statement of Revenues, Expenditures, and Changes in Fund Balance
- Tax Collection Report
- Monthly Investment Report

ADJOURNMENT TIME: 8:38 PM

Approved as submitted on March 7, 2022.

Rick Harrell, President

Jennifer Hiser, Secretary



Crandall Independent School District

Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	Class Size Exception
Agenda Section:	Consent
Administrator Responsible:	Dr. Murry, Assistant Superintendent Data and Information Systems

Summary/Background Information:

A district must submit a request for a class size exception for any classrooms in kindergarten - fourth grade that exceed the 22 students class size limit ([Texas Education Code §25.112](#)). A district seeking an exemption must notify the commissioner and apply for the exemption not later than the later of (1) October 1; or 2) the 30th day after the first school day the district exceeds the limit. Note: class size limits do not apply to physical education classes or fine arts classes.

Class size limitations generally apply throughout the school year, with the exceptions noted below:

- Any twelve-week period selected by the district with a significant percentage of migratory children (25.112(1)), or
- The last twelve weeks of any school year for all other districts

In considering whether to grant an exception, the commissioner must find that the class size limit creates an undue hardship on the district. The commissioner will consider such things as unanticipated enrollment growth, lack of facilities, lack of teachers, or financial hardships.

The unanticipated growth is requiring Crandall ISD to file for class size exceptions with TEA.

Campus	Campus Rating	Number of sections exceeding 22:1	Steps for Compliance
Martin	Not Rated	1 Third Grade	<ul style="list-style-type: none"> • Consider approval of additional personnel • Work with demographer for future trends in growth and boundary changes and program adjustments • Centralized enrollment to adjust for full sections
Wilson			
Walker			
Dietz			
Noble-Reed	Not Rated	1 Kindergarten 1 First Grade 1 Fourth Grade	

Attached is the application from TEA for Class Size Exception We are requesting an exception for four sections in Crandall ISD.

Administrative Recommendations:

Administration recommends approval of the class size exception for four sections in Crandall ISD.

2021-2022 Application for Class Size Exception

District: Crandall ISD (129-901)

Contact: Anjanette Murry

972-427-6027

amurry@crandall-isd.net

Date of Board Approval: _____

Board Vote: For _____ Against _____ Abstain _____ Absent _____

Superintendent: Wendy Eldredge, Ed. D.

Signature

Board President: Rick Harrell

Signature

Application for Expedited Waivers will be submitted through the TEAL application.



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: Teacher Contract Renewals

Agenda Section: Consent

Administrator Responsible: Holly Keown, Ed. D.

Summary/Background Information: 2022-23 Teacher Contract Renewals

Administrative Recommendation: Administration recommends renewal of the 2022-2023 teacher contracts as presented.



Crandall Independent School District Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	CISD Pilot Texas Tech Doctoral Program
Agenda Section:	Consent
Administrator Responsible:	Holly Keown, Ed. D.

Summary/Background Information: The Ed.D. in Educational Leadership is designed to prepare executive school leaders who can identify and implement research-based solutions to high-leverage problems of practice within a PreK-12 school district context with a focus on school improvement. In a sequence of decided courses concluding with a problem of practice dissertation, students will deepen their abilities to lead instructional change, identify problems of practice, and implement interventions in CISD to improve student achievement.

Administrative Recommendation: Administration seeks approval of district support for doctoral program.



Support for CISD Cohort Doctorate Program Proposal

February 14, 2022

Texas Tech College of Education Doctoral Program

Program Overview

The Ed.D. in Educational Leadership is designed to prepare executive school leaders who can identify and implement research-based solutions to high-leverage problems of practice within a PreK-12 school district context with a focus on school improvement. In a sequence of selected courses concluding with a problem of practice dissertation, students will deepen their abilities to lead instructional change, identify problems of practice, and implement interventions in CISD to improve student achievement.

Details

- For current CISD professionals wanting to earn their doctorate
- Dedicated time to complete course work to support growth and development to help grow them in the current and future
- 60 Hour program
 - 48 hours of coursework
 - 12 credits for dissertation research
- January 2022 cohort
- 3 ½ year program
- Fully online
- Superintendent Certification is completely integrated into the program

District Support for Doctoral Program with Texas Tech

District Partial Support of 60 hours	CISD Support D
Cost of Program Average Cost \$3500 per semester (six hours)	\$1000 per semester
Yearly Cost per employee (24 hours)	\$4,000 per year
Total Cost for 10 semesters (60 hours)	\$10,000 per employee
Total Cost for Cohort One CISD (6)	\$60,000 total
Yearly Cost for CISD Cohort	\$24,000 yearly

Employees would receive partial support from CISD for 60 hours.



CRANDALL INDEPENDENT SCHOOL DISTRICT

Texas Tech Doctoral Program Proposal

Program Overview

The Ed.D. in Educational Leadership is designed to prepare executive school leaders who can identify and implement research-based solutions to high-leverage problems of practice within a PreK-12 school district context with a focus on school improvement. In a sequence of decided courses concluding with a problem of practice dissertation, students will deepen their abilities to lead instructional change, identify problems of practice, and implement interventions in CISD to improve student achievement.

Details

- For current CISD professionals wanting to earn their doctorate
- Dedicated time to complete course work to support growth and development to help grow them in the current and future
- 60 Hour program
 - 48 hours of coursework
 - 12 credits for dissertation research
- January 2022 cohort
- 3 ½ year program
- Fully online
- Superintendent Certification is completely integrated into the program

Participation Requirements

- You must have been employed with Crandall ISD for a minimum of 1 year prior to applying for the Doctoral Program
- Employment with Crandall ISD for 4 years from the start of the doctoral program.
- If an employee leaves the district prior to the completion of the program, or the end of the commitment period, the employee will need to repay the district for their investment. Funds can be withheld from an employee's final paycheck.

*The superintendent may release the employee from this commitment and contract prior to the agreed-upon 4 years.

Employee Information

Employee _____ Name

Employee _____ Number

Campus/Department

Cell Phone

District Email Address

Attestation

I hereby certify that the information I have provided to the best of my knowledge is true, accurate, and complete. The goal of the Doctorate Program is to support growth of our existing staff while improving CISD student achievement. Once my doctorate has been earned, I commit to remain in Crandall ISD for a minimum of five years.

Signature

Date



Crandall Independent School District Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	Police Dept. MOU on Policies & Procedures
Agenda Section:	Consent
Administrator Responsible:	Chief Taylor

Summary/Background Information: The purpose of this MOU is to set out a common understanding of the policies and procedures that the Crandall Police Department and the Crandall ISD Police Department will follow in providing police services to CISD schools.

Administrative Recommendation: Administration recommends approval of the Police Department Memorandum of Understanding between Crandall ISD and the City of Crandall regarding policies and procedures.

MEMORANDUM OF UNDERSTANDING

Between

CRANDALL INDEPENDENT SCHOOL DISTRICT, on behalf of its POLICE DEPARTMENT

AND

CITY OF CRANDALL, on behalf of its POLICE DEPARTMENT

This Memorandum of Understanding (MOU) is being executed by the Crandall Independent School District ("Crandall ISD" or "District"), on behalf of its Police Department, (Collectively "Crandall ISD Police Department"), in conjunction with the City of Crandall, on behalf of its Police Department. These departments agree to abide by the terms and provisions of this MOU throughout the duration of this agreement.

I.

PURPOSE

The purpose of this MOU is to set out a common understanding of the policies and procedures that the Crandall Police Department and the Crandall ISD Police Department will follow in providing police services to the Crandall ISD schools in the city of Crandall, Kaufman County and State of Texas. This MOU is a formal agreement to clarify jurisdiction, define parameters and areas of responsibilities, and to establish a spirit of cooperation to enhance the services both agencies provide to the citizens residing within the city limits of Crandall in accordance with the provisions of the **Texas Education Code, Section 37.081**.

II.

MISSION

The mission of this MOU is to provide better utilization of resources by the Crandall Police Department and the Crandall ISD Police Department. Further, it will substantially increase cooperation between these two departments elimination waste of public resources and resulting in better accumulation of crime analysis data and ultimately providing the safest environment possible for the school children of Crandall ISD and reducing crime in the Crandall city limits.

A. SERVICES PROVIDED AND RESPONSIBILITIES OF THE CRANDALL POLICE DEPARTMENT

1. The Crandall Police Department shall retain primary jurisdiction over property or areas not owned, leased, rented, or otherwise under control of Crandall ISD.

2. The Crandall Police Department Public Information Office shall (except in cases of immediate life-safety emergencies when time is critical) notify the Crandall ISD Communications Office prior to releasing information to the media or public in joint cases involving students, district employees, crimes involving district property or, or where the investigation involves the mutual interest of both Crandall ISD Police Department and the Crandall Police Department.
3. Crandall Police Department agrees to comply with notification of criminal activities involving students enrolled in Crandall Independent School District school pursuant to **Article 15.27 of the Texas Code of Criminal Procedures**.
4. Upon request of the Crandall ISD Police Department, the Crandall Police Department will assist the Crandall ISD Police Department or other lead agency in the reporting and investigating of major crimes against persons, including homicide, kidnapping, and suicide.
5. Crandall Police Department agrees to coordinate warrant service on District property with the Crandall ISD Police Department.
6. The Crandall Police Department, if able agrees to assist the Crandall ISD Police Department in response to barricaded person, hostage incidents, or bomb threats occurring on Crandall ISD campuses. If any assistance is needed, the Crandall Police Department will have primary control over the incident in all cases where it has assumed primary jurisdiction. The Crandall Police Department retains all command and authority during these types of incidents. Crandall ISD Police Department will remain available for assistance at the request of the Crandall Police Department Incident Commander.
7. The Crandall Police Department will provide gang unit assistance as able and available and share intelligence information regarding campus crime with the Crandall ISD Police Department.
8. The Crandall Police Department will agree to provide officer safety assistance and assist with officer back-up to officers employed by Crandall ISD Police Department when requested and as resources allow to assist with the safety of Crandall ISD Police Officers.
9. The Crandall Police Department, when requested to and as able, agrees to provide additional continued access to specialized services for all Crandall Independent School District campuses and facilities in the interest of public safety.
10. The Crandall Police Department agrees to assist the Crandall ISD Police Department in responding to active shooter calls on Crandall Independent School District campuses as able. Active shooter Incident Management calls for establishment of Unified Command. Both the Crandall ISD Police Department and Crandall Police Department will participate in Unified Command as appropriate.

B. SERVICES PROVIDED AND RESPONSIBILITIES OF THE CRANDALL ISD POLICE DEPARTMENT

1. Except as stated herein, the Crandall ISD Police Department shall have primary jurisdiction and responsibility for all offenses that occur on property located within the geographical boundaries of Crandall ISD. If circumstances require an immediate response within the Crandall ISD boundaries, Crandall Police Officers are present, and Crandall ISD Police Officers

are not available, then Crandall Police Department shall assume primary control of the response until otherwise directed by the Crandall ISD Police Department.

2. The Crandall ISD Police Department will endeavor to provide a safe and secure environment for students, staff, and citizens while those persons are participating in our attending school sponsored activities which includes, but not limited to, extra-curricular activities, students in transit to and from school in a Crandall ISD vehicle, or any other school-sponsored or school related activity on or off campus.
3. The Crandall ISD Police Department will protect the property including real and personal property located inside and outside the boundaries of Crandall ISD that is owned, leased, rented, or otherwise under the control of Crandall ISD.
4. The Crandall ISD Police Department will endeavor to protect the personal property of those individuals engaged in school sponsored or school related activities.
5. The Crandall ISD Police Department will enforce all laws, including municipal ordinances, county ordinances, and federal, state, and local laws.
6. The Crandall ISD Police Department will initiate a crime offense report and investigate all crimes on Crandall ISD campuses and facilities.
7. The Crandall ISD Police Department will investigate all traffic crashes that occur on Crandall ISD property and all crashes involving any Crandall ISD owned vehicles.
8. The Crandall ISD Police Department will agree to provide officer safety assistance and assist with officer back-up to officers employed by the Crandall Police Department when requested and as resources allow to assist with the safety of Crandall Police Officers.
9. The Crandall ISD Police Department agrees to coordinate warrant service within the city limits of Crandall with the Crandall Police Department.
10. The Crandall ISD Police Department will share gang and crime intelligence with the Crandall Police Department on continuous basis.

III.

DURATION

The term of this Agreement shall be for a period of one (1) calendar year from the date of execution of this Agreement by both parties. This Agreement may be renewed for additional one-year terms by the Crandall ISD Police Department by providing Crandall Police Department with a written notice of its intention to renew not later than thirty (30) days prior to the expiration of the then current term.

Nothing contained in this agreement shall waive the respective immunities of the City of Crandall and Crandall ISD.

IV.

MUTUAL HOLD HARMLESS

Each Party shall be responsible for the action of each Party's own employees, officials, officers, and agents. The Parties expressly agree that nothing in this Agreement shall be construed as a waiver by the Parties of any right, privileges, defenses, remedies, or immunities available to the Parties as governmental entities.

The renewal date shall be calculated using the last date of execution of the Agreement by both parties. Notice, for purpose of termination shall be to the Chief of Police for the City of Crandall and the Superintendent for the Crandall ISD, Pursuant to Section 37.081(f) of the Texas Education Code. Notice shall also be provided to the Crandall ISD Police Chief.

AGREED TO:

By: _____ Mayor, City of Crandall

Date: _____

By: _____ Chief of Police, City of Crandall, Texas

Date: _____

By: _____ President, Board of Trustees, Crandall ISD

Date: _____

By: _____ Superintendent, Crandall ISD

Date: _____

By: _____ Chief of Police, Crandall ISD

Date: _____



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: County MOU on Shelter & Mass Care Activities

Agenda Section: Consent

Administrator Responsible: Keith Chapman

Summary/Background Information: The purpose of this MOU is to outline the actions that each party is willing to undertake with respect to shelter and mass care operations as a basis for further planning and preparation by both parties.

Administrative Recommendation: Administration seeks the approval of the Shelter & Mass Care Activities Memorandum of Understanding between Crandall ISD and Kaufman County.

MEMORANDUM OF UNDERSTANDING SHELTER & MASS CARE ACTIVITIES

This Memorandum of Understanding is made and entered into between Kaufman County, referred hereinafter as the County and Crandall Independent School District, referred hereinafter as the Organization.

The County desires the assistance of volunteer and charitable organizations in providing shelter and mass care for the members of public affected by emergency situations. The Organization wishes to volunteer its resources for such purposes during emergency situations. The purpose of this memorandum is to outline the actions that each party is willing to undertake with respect to shelter and mass care operations as a basis for further planning and preparation by both parties.

When requested by an authorized representative of the County, the Organization will use its best efforts to provide the following services for disaster victims:

- Activate and operate temporary shelters and register people using those shelters.
 - Activate and operate mass feeding facilities a fixed site or sites.
 - Provide meal preparation facilities to feed victims lodged in other facilities.
 - Provide assistance in sheltering pets of persons displaced from their homes.
 - Receive, sort, and distribute goods donated for disaster victims.
 - Other (describe):
-
- Participate in pre-disaster shelter and mass care planning with the County.
 - During emergency operations, provide periodic reports on its shelter and mass care activities to the Shelter Officer in the Emergency Operating Center.

The County will use its best efforts to:

- Where possible, provide advance warning to the Organization of the possible need for shelter and mass care operations so that the Organization may mobilize its resources.
- Provide security for shelter and mass care facilities.
- Provide fire inspections for shelter and mass care facilities.
- Provide traffic control in the vicinity of shelter and mass care facilities.
- Provide information to disaster victims through the media on what they should bring and should not bring to shelter and mass care facilities.
- Provide or arrange transportation for shelter and mass care equipment and supplies that cannot be transported by the Organization.
- Coordinate with state and federal agencies to obtain supplementary food supplies, if required.
- To the extent possible, ensure utilities are operable at shelter and mass care facilities.
- Provide updated information on the emergency situation to shelter managers to be passed on to shelter occupants.
- Invite volunteer and charitable organizations to participate in periodic emergency exercises to test plans, procedures, and coordination.
- Other (describe):

In witness of these understandings, the authorized representative of governing board of the Organization and the chief elected official of the County have fixed their signatures to this memorandum, which shall become effective and operative upon the fixing of the last signature hereto.

President
Crandall ISD

County Judge
Kaufman County

Date

Date



Crandall Independent School District
Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: Middle School Construction Update

Agenda Section: Information

Administrator Responsible: Scott Stewart

Summary/Background Information: Monthly project update on CISD new Middle School.

Administrative Recommendation: For your information.



Crandall ISD New Middle School

Monthly Project Update

Location: March School Board Meeting

Date: March 7, 2022

Time: 7:00 pm

Recent and Near-term Timeline

- 02/16 Begin metal panel installation
- 03/02 Overhead doors at stage begin installation
- 03/10 Heat on in Classroom Wing and Practice Gym
- 03/14 Flooring begins in Classroom Wing
- 03/17 Cooler/Freezer for Kitchen delivered
- 03/31 Fiber Internet installed

Municipal Topics

- New access from 741 to Fletcher Road needs to be completed.

Other Notes

- Technology
 - Coordinated rough-in in conference rooms with equipment and furniture
 - Mounts for interactive displays have been installed in the classrooms
- Fixtures, Furniture and Equipment (FF&E)
 - Furniture delivery is expected in May
 - Practice gym will be used to receive furniture and stage installation
 - Life skills equipment has been coordinated with furniture to be provided
- Materials Delivery
 - Lockers were delivered the week of 2/28
 - Resilient Flooring materials are expected mid-March
 - Aluminum storefront doors are expected by the end of March.
 - Elevator installation is underway
 - Steel for lift in Life Skills classrooms to arrive the week of 3/7



Crandall ISD New Middle School

Additional Consultants

- None recommended at this time

CRANDALL ISD

MIDDLE SCHOOL

CONSTRUCTION UPDATE

AREAS A & B

- Lighting installation is in progress.
- Permanent power is scheduled for the first week of March.
- MEP ceiling trim out is scheduled for completion at the end of March.

AREA C

- Overhead MEP rough-in is complete in the administration area.
- Kitchen is scheduled for completion in mid-March.
- MEP trim out is scheduled for completion in mid-March.

AREA D

- Brick installation is scheduled for completion the second week of March.
- MEP rough-in is scheduled for completion the third week of March, with paint to follow.

AREA E

- Overhead rough-in is scheduled for completion the third week of March, with MEP trim out to follow.

AREA F

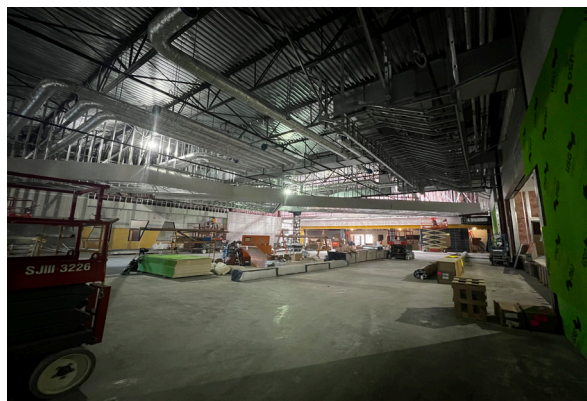
- MEP ceiling trim out is scheduled for the second week of March.

EXTERIOR

- Track installation is in progress.
- Tennis courts will be poured mid-March.



Cost Summary	
Total Budget:	\$59,984,154
Total Completed & Stored To Date:	\$40,198,053
Percentage Complete:	67%
Contingency Remaining:	\$1,046,507



DIFFERENT FROM THE GROUND UP





Crandall Independent School District Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	College and Career Readiness Update
Agenda Section:	Information
Administrator Responsible:	Angela Nolan

Summary/Background Information: This is an update from the Director of College and Career Readiness.

Administrative Recommendation: For your information.



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: Student Worker Program

Agenda Section: Information

Administrator Responsible: Christy Starrett

Summary/Background Information: In an effort to improve campus cleanliness and provide additional COVID cleaning, CISD is seeking student workers and adults to assist ABM in cleaning classrooms.

Administrative Recommendation: For your information.



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: 2022-2023 Schedules for MS/HS

Agenda Section: Information

Administrator Responsible: Dr. Carri Eddy

Summary/Background Information: After multiple staff members expressed concerns about our current hybrid/modified block scheduling at the middle school and high school our secondary staff was surveyed to get their input. Sixty-nine percent of our staff want to return to a traditional schedule for the 2022-23 school year. Seventy-six percent of our staff responded to the survey.

Administrative Recommendation: For your information.



Information Item:

2022-23 Schedules for MS/HS

Presenter: Carri Eddy, Ed.D.

Proposal:

69% of our teachers want to return to traditional scheduling versus our current hybrid/modified block schedule (76% of our secondary teachers responded to our survey)



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: 2022-2023 School Start/End Times

Agenda Section: Information

Administrator Responsible: Dr. Carri Eddy

Summary/Background Information: As a fast growth district, implementing a three-tier start/end time will make student transportation more efficient and cost effective.

Administrative Recommendation: For your information.

Information Item: 2022-23 School Start/End Times



Presenter: Carri Eddy, Ed.D.

Proposal:

	High School	Elementary	Middle School	DAEP
Regular School Day 445 min	7:20 a.m. to 2:45 p.m.	7:50 p.m. to 3:15 p.m.	8:20 a.m. to 3:45 p.m.	7:50 a.m. to 3:15 p.m.
Early Release Day 240 min	7:20 a.m. to 11:20 a.m.	7:50 a.m. to 11:50 p.m.	8:20 a.m. to 12:20 p.m.	7:50 a.m. to 11:50 p.m.





Crandall Independent School District Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	Staffing for Freshman Center
Agenda Section:	Information
Administrator Responsible:	Holly Keown, Ed. D.

Summary/Background Information: We are expecting 525 students to be enrolled in the Freshman Center. It will cost approximately \$787,600 to cover 23 FTEs for the Freshmen Center. We would pull 20 teaching units from Crandall High School. If the block scheduling changes to a seven-period day, then the number of required teachers we pull from the high school will be lower.

Administrative Recommendation: For your information.



Freshmen Center Staffing Plan March 7, 2022

Staffing Requested

Type of Employee	#	Average Salary	Benefits	Total	Funding
Principal	1	\$95,000	\$9,500	\$104,500	Local
Principal SecretaryAdmin Asst.	1	\$40,000	\$4,000	\$44,000	Local
Assistant Principal	1	\$75,000	\$7,500	\$82,500	Local
Administrative Assistant	1	\$40,000	\$4,000	\$44,000	Local
Administrative Intern	1	\$60,000	\$6,000	\$66,000	Local
Counselor	1	\$72,000	\$7,200	\$79,200	Local
Administrative Assistant	1	\$40,000	\$4,000	\$44,000	Local
Nurse	1	\$67,000	\$6,700	\$73,700	Local
Diagnostician	1	\$67,000	\$6,700	\$73,700	SPED
Student Support Facilitator (testing/ARDs/504)	1	\$60,000	\$6,000	\$66,000	Local
Police Officer	1	\$60,000	\$6,000	\$66,000	Local
Librarian/AV Media Specialist	1	\$65,000	\$6,500	\$71,500	Local
Interventionist Specialist	2	\$120,000	\$12,000	\$132,000	Comp Ed
Life Skills Teacher	1	\$65,000	\$6,500	\$71,500	Sped
Paraprofessional	2	\$42,000	\$4,200	\$46,200	Local
BAC Teacher	1	\$65,000	\$6,500	\$71,500	Local
Paraprofessional	2	\$42,000	\$4,200	\$46,200	Local
Principles of Agriculture and Natural Resources	1	\$60,000	\$6,000	\$66,000	CTE

Principles of Arts A/V	1	\$60,000	\$6,000	\$66,000	CTE
Principles of Health Science	1	\$60,000	\$6,000	\$66,000	CTE
Total Cost	23			\$1,262,800	
Total CTE Funds	3			\$198,000	
Total Comp Ed Funds	2			\$132,000	
Total Special Education Funds	2			\$145,200	
Total Local Funds				\$787,600	

Required Courses				
Courses	#	# Sections	# Teachers	Traveling Teachers
Algebra I/Honors	525	21 Sections	3.5 Teachers	3 sections
Geometry	116	5 Sections	1 Teacher	
Biology/Honors	525	21 Sections	3.5 Teachers	3 sections
English I /Honors	525	21 Sections	3.5 Teachers	3 sections
World Geography/Honors/AP Human	525	21 Sections	3.5 Teachers	3 sections
Art	208	10 Sections	2 Teachers	
Spanish 1	190	9 Sections	1.5 Teachers	3 sections
Spanish 2	210	9 Sections	1.25 Teachers	
Health	98	4 Sections	.5 Teacher	Health/BIM with PE Certified to create full schedules
BIM	94	4 sections	.5 Teacher	
PE	167	8 sections	2 Teachers	

On Site Courses - Teachers will Travel	
Choir	Principles of Agriculture
Dance	Professional Communications
AVID	Principles of Health Science

Off Site Courses - Students will Travel

Principles of Applied Engineering	Principles of Construction
Principles of Education	Principles of Law and Public Services
Floral Design	

Population

Current 8th Grade Class	446	Special Education	65
Growth Expected	79	English Language Learners Served	62
Total Freshmen	525	English Language Learners Monitor/Dismissed	29
Advanced Students	116		

Courses Selected by Students

AVID	37 + 3 = 40	2 = .25 FTE	Prin Art,AV TE	12 + 2 = 14	1 = .125 FTE
Dance	25 + 4 = 29	1 = .125 FTE	Prin Construct	35 + 6 = 41	2 = .25 FTE
Dig Art Media	10 + 2 = 12	1 = .125 FTE	Prin Education	17 + 3 = 20	1 = .125 FTE
Dig Media	44 + 8 = 52	2 = .25 FTE	Prin Health Sci	69 + 12 = 81	4 = .50 FTE
Floral Design	37 + 7 = 44	2 = .25 FTE	Prin Law & Publ	30 + 5 = 35	2 = .25 FTE
Health	83 + 15 = 98	4 = .50 FTE	Prin Agriculture	51 + 9 = 60	3 = .375 FTE
Spanish 1	161 + 29 = 190	8 = 1.25 FTE	Prof Comm	65 + 12 = 77	3 = .375 FTE

79 New Students added to classes above = 15% Students

Cafeteria Workers		
Compass	Relocate 2 employees to Freshmen Center	0
Freshmen Center	Add 5 workers	\$16,500 + \$1,650 = \$90,750
Cafeteria Manager	Need one	\$21,726 + \$2,172 = \$23,898
Federal Funding		\$114,648



Crandall Independent School District Board of Trustees

Board Meeting Date:

March 7, 2022

Agenda Item:

CISD Education Foundation Monthly Update

Agenda Section:

Information

Administrator Responsible:

Ms. Kimberly Bramhall

Summary/Background Information: CISD Education Foundation monthly update.

Administrative Recommendation: For your information.



Crandall Independent School District Board of Trustees

Board Meeting Date:

March 7, 2022

Agenda Item:

CISD Communication Updates

Agenda Section:

Information Item

Administrator Responsible:

Mr. Chris Moore

Summary/Background Information: Highlights of the month's accomplishments by CISD students and staff.

Administrative Recommendation: For your information.



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: Ballot Position Drawing

Agenda Section: Action

Administrator Responsible: Chris Moore

Summary/Background Information: Drawing for ballot position in May 2022 school board election, At-Large Place 4.

Administrative Recommendation: Hold drawing to determine ballot position.



Crandall Independent School District

Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	Missed School Day Waiver
Agenda Section:	Action
Administrator Responsible:	Dr. Murry, Assistant Superintendent Data and Information Systems

Summary/Background Information:

Districts or campuses can request a waiver for excused absences if instructional days are missed due to inclement weather, health, safety-related, or other issues. The first two days missed for any reason must be made up, using either designated makeup days or additional minutes.

House Bill (HB) 2610, passed by the 84th Texas Legislature, effective for the 2015-2016 school year, amends Texas Education Code (TEC), §25.081, by adding (c) which allows a school district to add additional minutes to the end of the district's normal school hours as necessary to compensate for minutes of instruction lost due to school closure caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity.

If because of weather, safety, or health issues, your district misses additional instructional days beyond the two days made up using built in or additional minutes or days, your school district can apply to the TEA for a missed school day waiver.

We are requesting a waiver for 300 instructional minutes. Attached is the application from TEA Missed School Day Waiver.

Administrative Recommendations:

Administration recommends approval of the TEA Missed School Day Waiver.

2021-2022 Application for Missed School Day Waiver

District: Crandall ISD (129-901)

Contact: Anjanette Murry

972-427-6027

amurry@crandall-isd.net

Date of Board Approval: _____

Board Vote: For _____ Against _____ Abstain _____ Absent _____

Superintendent: Wendy Eldredge, Ed. D.

Signature

Board President: Rick Harrell

Signature

Application for Expedited Waivers will be submitted through the TEAL application.



Crandall Independent School District Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	Resolution on Employee Make Up Days
Agenda Section:	Action
Administrator Responsible:	Dr. Carri Eddy

Summary/Background Information: Winter Storm Landon caused ice on roadways and snow accumulation throughout Crandall ISD, resulting in school being cancelled on February 3 and 4, 2022. The Administration seeks to pay employees who were instructed not to report to work on these two days. Important public purposes will be achieved by this expenditure, including protecting students and staff, maintaining morale, reducing turnover, and ensuring continuity of District staffing.

Administrative Recommendation: Administration recommends approval the Resolution regarding wage payments during emergency closure for Winter Storm Landon.

**RESOLUTION OF THE BOARD OF TRUSTEES OF REGARDING
WAGE PAYMENTS DURING EMERGENCY CLOSURE
FOR WINTER STORM LANDON AND WINTER STORM OAKLEE**

WHEREAS, Winter Storm Landon and Winter Storm Oaklee caused ice on roadways and snow accumulation throughout Crandall ISD during the week of January 30, 2022 and January 20, 2022; and

WHEREAS, school was canceled on February 3, 4, and 24, 2022 as a result of icy roadways and unsafe conditions for school transportation; and

WHEREAS, the Crandall Independent School District Board of Trustees is authorized by Texas Education Code Section 45.105 to spend district funds for purposes necessary in the conduct of the public schools as determined by the Board; and

WHEREAS, the Board finds that a need exists to address wage payments for employees who were instructed not to report for work during this emergency closure; and

WHEREAS, the Board determines that employees who are instructed not to report to work may suffer a loss of pay if the District is closed; and

WHEREAS, the Board concludes that continuing wage payments to all regular employees—contractual and non contractual, salaried and non-salaried—who would suffer a loss in pay when they were instructed not to report to work during this emergency closure serves the public purposes of protecting students and staff, maintaining morale, reducing turnover, and ensuring continuity of District staffing;

IT IS THEREFORE RESOLVED THAT the Board of Trustees of the Crandall Independent School District authorizes continued wage payments to all regular employees—contractual and non contractual, salaried and non-salaried—who were instructed not to report to work on February 3, 4, and 24, 2022 because of Winter Storm Landon and Winter Storm Oaklee.

Adopted on March 7, 2022 by the Crandall ISD Board of Trustees.

Rick Harrell
President, Board of Trustees

Jennifer Hiser
Secretary, Board of Trustees



Crandall Independent School District Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	Approval of Resolution for SHAC to Recommend Curriculum
Agenda Section:	Action
Administrator Responsible:	Dr. Carri Eddy

Summary/Background Information: The District's human sexuality instruction is scheduled for review and adoption this spring. The 87th Texas Legislature amended Texas Education Code Section 28.004(e-1)(1) to require the Board of Trustees to adopt a resolution convening the local school health advisory council (SHAC) for the purpose of making recommendations regarding curriculum materials for the school District's human sexuality instruction before the SHAC can begin the review and adoption process. The Administration seeks approval of a resolution to comply with this new statutory requirement.

Administrative Recommendation: Administration recommends approval the resolution to convene the School Health Advisory Council to recommend curriculum materials for human sexuality instruction.

CRANDALL INDEPENDENT SCHOOL DISTRICT

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE CRANDALL INDEPENDENT SCHOOL DISTRICT (“CRANDALL ISD” OR “DISTRICT”) AUTHORIZING THE SCHOOL HEALTH ADVISORY COUNCIL (“SHAC”)

WHEREAS, pursuant to Section 28.004 of the Texas Education Code, the Board of Trustees must appoint at least five members to the SHAC;

WHEREAS, the SHAC is responsible for making policy recommendations to the board on issues regarding student health in district programming and curriculum as set forth in Section 28.004(c) of the Texas Education Code;

WHEREAS, the SHAC’s responsibilities include but are not limited to making recommendations to the board regarding appropriate grade levels and methods of instruction for human sexuality;

WHEREAS, the Board of Trustees must consider the recommendations of the SHAC before changing the District’s health education curriculum or instruction and the SHAC must comport with all procedural requirements set forth in House Bill 1525;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CRANDALL INDEPENDENT SCHOOL DISTRICT:

1. The foregoing recitals are hereby found to be true and correct and are adopted and incorporated herein by reference as findings of fact;
2. Approves and authorizes the following individuals to serve as SHAC members:

Heather Fowler	Billy Swanson
Keith Chapman	Timothy Davis
Tammy Fairchild	Meredith Byington
Mary Miller	Missy Collins
Nettie Malcolm	Janna Settles
Katrina Spottsville	Tonya Moreland
3. Approves and authorizes the SHAC to bring forth recommendations to the Board of Trustees as set forth in Section 28.004 of the Texas Education Code, including but not limited to recommendations regarding the appropriate grade levels and methods of instruction for human sexuality.
4. That it is hereby found, determined and declared that a sufficient written notice of the date, time, place and subject of the meeting of the Board of Trustees of the Crandall Independent School District at which this Resolution was adopted was posted at a place convenient and readily accessible at all times to the general public for the time required by law preceding

this meeting as required by Chapter 551, Texas Government Code, and that this meeting has been open to the public as required by law at all times during which this Resolution and the subject matter thereof has been discussed, considered and formally acted upon. The Board of Trustees further ratifies, approves and confirms such written notice and posting thereof.

5. This Resolution is in place until expressly rescinded or modified by the Board of Trustees or the completion of the 2021 – 2022 school year, whichever occurs first.

PASSED AND APPROVED by the Board of Trustees of Crandall Independent School District this 7 day of March 2022.

Rick Harrell, President
Board of Trustees
Crandall Independent School District

Jennifer Hiser, Secretary
Board of Trustees
Crandall Independent School District



Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: Approval of 2022-2023 School Calendar

Agenda Section: Action

Administrator Responsible: Dr. Carri Eddy

Summary/Background Information: Create an instructional calendar that optimizes instructional time for students and plan for professional learning opportunities for teachers.

Administrative Recommendation: Administration seeks the approval of the proposed 2022-23 instructional calendar as recommended by the Crandall ISD staff and community.

Information Item: 2022-23 School Calendar



Presenter: Carri Eddy, Ed.D.

Proposal:

55% of the 398 survey responses selected [Option B](#)

53% of the 201 teachers did not want to return three days earlier in exchange for a full week a fall break

Crandall ISD Instructional Calendar

2022-2023 School Year

Option B

July 2022						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						
July 1, 4, 8, 15, 22, & 29 District Offices Closed						

August 2022						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			
August 2-4 New to CISD Teachers Report August 8-12 All CISD Staff report for Professional Learning August 15 Teacher Work Day August 16th 1 st Day of School						

September 2022						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	
September 5 Student-Staff Holiday September 16 End of 1 st Six Weeks & Early Release September 19 Beginning of 2 nd Six Weeks September 30 Student-Staff Holiday						

October 2022						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					
October 3 Student Holiday / Staff Parent Conf. Exchange October 4 Student Holiday / Staff Professional Learning October 28 End of 2 nd Six Weeks & Early Release October 31 Beginning of 3 rd Six Weeks						

November 2022						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			
November 11 Student Holiday / Staff Professional Learning November 21-22 Student Holiday / Employee Exchange November 23-25 Student-Staff Holiday						

December 2022						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
December 16 End of 3 rd Six Weeks / Semester / Early Release December 19-30 Student / Staff Holiday						

January 2023						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				
January 2 Student-Staff Holiday January 3 Student Holiday - Staff Professional Learning January 4 Beginning of 4 th Six Weeks January 16 Student-Staff Holiday						

February 2023						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				
February 17 End of 4 th Six Weeks & Early Release February 20 Student-Staff Holiday February 21 Student Holiday - Staff Professional Learning February 22 Beginning of 5 th Six Weeks						

March 2023						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	
March 13-17 Student-Staff Holiday						

April 2023						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						
April 6 End of 5 th Six Weeks / Early Release April 7 Student Holiday / Employee Exchange April 10 Student Holiday / Staff Parent Conf. Exchange April 11 Beginning of 6 th Six Weeks						

May 2023						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	*23	24	25	26	27
28	29	30	31			
May 23 Crandall High School Graduation May 25 End of 6 th Six Weeks / 2 nd semester / Early Release May 26 Teacher Work Day May 29 District Offices Closed						

June 2023						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	
June 2, 9, 16, 23, 30 District Offices Closed						

Crandall ISD Instructional Calendar

2022-2023 School Year

Option B

IMPORTANT STUDENT DATES
Student and Staff Holidays (district offices closed) September 5, September 30, November 23-25, December 19–January 2, January 16, February 20, March 13-17
Student Holidays (district offices closed) October 3, November 21-22, April 7, April 10
Student Holidays – Teacher Professional Learning Days October 4, November 11, January 3, February 21
STAAR Testing Dates
Early Release Days for Students September 16, October 28, December 16, February 17, April 6, May 25

IMPORTANT STAFF DATES
Student and Staff Holidays (district offices closed) September 5, September 30, November 23-25, December 19 – January 2, January 16, February 20, March 13-17, May 29
Student Holiday – Teacher Exchange Days (district offices closed) October 3 & April 10 (Parent-Teacher Conference Exchange Days) November 21 - 22, April 7 (Summer Professional Learning Exchange Days – 18 hours)
All CISD Staff report – Back To School Professional Learning August 8-12 Professional Learning State Days October 4, November 11, January 3, February 21 <i>These days count toward the total instructional minutes required by TEA.</i>
Teacher Work Days August 15 & May 26
New to CISD Teachers report August 1-4, 2022

First Day of School – August 16, 2022

Last Day of School – May 25, 2023

Student Holidays – Students do not report to school.

SCHOOL HOURS				
	Elementary	Middle School	High School	DAEP
Regular School Days	7:50 a.m. to 3:15 p.m. 445 min	8:20 a.m. to 3:45 p.m. 445 min	7:20 a.m. to 2:45 p.m. 445 min	7:50 a.m. to 3:15 p.m. 445 min
Tutorial Transportation	3:20 p.m. to 4:30 p.m.	3:50 p.m. to 5:00 p.m.	2:50 p.m. to 4:00 p.m.	
Early Release Days	7:50 a.m. to 11:50 p.m. 240 min	8:20 a.m. to 12:20 p.m. 240 min	7:20 a.m. to 11:20 p.m. 240 min	7:50 a.m. to 11:50 p.m. 240 min

Six Weeks	Dates	Days	Minutes
1 st	August 16, 2022 – September 15, 2022	22 Full Days	9,790
	September 16, 2022	1 Half Day	240
2 nd	September 19, 2022 – October 27, 2022	26 Full Days	11,570
	October 28, 2022	1 Half Day	240
	October 4, 2022	1 PL Waiver Day*	420
3 rd	October 31, 2022 – December 15, 2022	28 Full Days	12,460
	December 16, 2022	1 Half Day	240
	November 11, 2022	1 PL Waiver Day*	420
Total Semester 1		81 Days	35,380
4 th	January 4, 2023 – February 16, 2023	31 Full Days	13,795
	February 17, 2023	1 Half Day	240
	January 3, 2023	1 PL Waiver Day*	420
5 th	February 22, 2023 – April 5	26 Full Days	11,570
	February 21, 2023	1 PL Waiver Day*	420
	April 6	1 Half Day	240
6 th	April 11, 2023 – May 24, 2023	32 Full Days	14,240
	May 25, 2023	1 Half Day	240
Total Semester 2		94 Days	41,165
Total for Year		174 Days	76,545
Required minutes			75,600

Crandall ISD Instructional Calendar

2022-2023 School Year

Option B

Remaining (No need to designate bad weather make up days)	2 days over	+945
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Teacher Instructional Days With Students	171
Professional Learning Days (Not including waiver days above)	5
Teacher Work Days	2
*Professional Learning Waiver Days Oct 4, Nov 11, Jan 3, & Feb 21	4
**Exchange Days Nov 21,22 & April 7	3
***Parent Teacher Conferences Exchange Day Oct 3 rd & April 10 th	2
Total Teacher Workdays (State requires 187)	187

*Professional Learning Waiver Days are from 8:00 a.m. to 4:00 p.m. with a 1-hour lunch for a total of 7 hours (420 minutes). These minutes may be counted toward the overall instructional minutes for students.

**Staff will participate in 18 hours of professional learning during the summer in exchange for Nov 21, 22 & April 7 off (new teachers to the district will participate in new teachers training Aug 2-4 for their exchange day hours)

***Staff will hold 6 hours of parent teacher conferences outside of their contract hours in exchange for Oct 3rd & April 10th off (campus principals will work with staff to create their campus schedule)



Crandall Independent School District

Board of Trustees

Board Meeting Date: March 7, 2022

Agenda Item: Culture of Voting Resolution

Agenda Section: Action

Administrator Responsible: Chris Moore

Summary/Background Information: The Culture of Voting resolution is an initiative through Texas Educators Vote, a non-partisan partnership aimed to create a culture of voting in Texas public schools. The group encourages and supports educators in their efforts to model civic engagement for students. It also aligns with the state's Texas Essential Knowledge and Skills (TEKS), Texas Constitution and state laws requiring educators to register eligible students to vote.

Administrative Recommendations: Administration seeks the approval of the Culture of Voting Resolution.



RESOLUTION OF THE BOARD OF TRUSTEES OF CRANDALL INDEPENDENT SCHOOL DISTRICT

WHEREAS, the Texas Election Code Sections 276.001 and 276.004 protect an employee’s right to vote;
WHEREAS, exercising one’s right to vote is a civic duty that should be encouraged and promoted;
WHEREAS, the Board of Trustees of Crandall ISD seeks to create a culture of voting and encourage all District employees to model responsible citizenship for the benefit of students;
WHEREAS, public education and the educated citizenry created by public education are the greatest safeguards to the State of Texas and the continuation of a free society; and the institution of public education is best protected by a robust and informed electorate;

NOW THEREFORE BE IT RESOLVED,

1. That the Board of Trustees of Crandall ISD supports a culture of voting and seeks to encourage maximum participation by District employees and eligible students in the elections process.
2. That the Board of Trustees of Crandall ISD authorizes the administration to take steps necessary to ensure maximum participation by District employees and eligible students in the elections process, which may include:

- Creating District communications that inform employees and eligible students of the importance of voting;
- Creating District communications that inform employees and eligible students about when and where they may vote;
- Creating District communications that encourage employees to participate in voter pledge programs (such as TexasEducatorsVote.com);
- Creating District communications that encourage employees to use third-party tools to learn about candidates’ positions on public education (such as TeachTheVote.org);
- Conducting campus or districtwide assemblies that promote a culture of voting;
- Implementing administrative procedures that provide time during the early voting period for employees to vote;
- *Where feasible, providing District transportation to and from polling places;
- Implementing no-cost incentives to promote voter participation, such as permitting employees with an “I Voted” sticker to wear jeans; and
- Encouraging District and/or campus coordination with volunteer organizations, such as the PTA/PTO or retired educators groups, to encourage and facilitate the District’s efforts to create a culture of voting.

ADOPTED this seventh day of March, 2022, by the Crandall ISD Board of Trustees.

_____, Presiding Officer

_____, Secretary



Crandall Independent School District

Board of Trustees

Board Meeting Date:	March 7, 2022
Agenda Item:	ESSER Retention Stipend Pay
Agenda Section:	Information
Administrator Responsible:	Dr. Murry, Assistant Superintendent Curriculum & Instruction

Summary/Background Information:

Crandall ISD received ESSER III funds and has engaged in meaningful consultation with our stakeholders. As a result of the feedback, \$1.1M was earmarked for teacher retention stipends.

In August, all staff members received a check with the amount ranging from \$300-\$1500 depending on the number of years of service to Crandall ISD. The project total amount equaled \$285,392.36.

In November, all employees in Crandall ISD received a \$350 retention stipend just before the extended Thanksgiving holidays. The project total for the November stipends was \$239,661.24.

Crandall ISD has \$574,946.40 in remaining ESSER III funds to provide a third retention stipend. After receiving legal guidance from Walsh Anderson, administration will present a resolution for the retention stipend for the spring payment.

Administrative Recommendations:

Approval of the Resolution for ESSER Retention Stipend Pay



Crandall Independent School District

Board of Trustees

Board Meeting Date:

March 7, 2022

Agenda Item:

Approval of Construction Manager-Agent
Contract with Gallagher Construction

Agenda Section:

Action

Administrator Responsible:

Mike White

Summary/Background Information: The proposed draft contract is for construction manager services with our current contractor, Gallagher Construction, for the first phase of our 2022 bond projects (if election is successful) using the construction-manager-agent delivery method.

Administrative Recommendation: Administration recommends delegation of authority to negotiate a construction manager-agent services with Gallagher Construction.

 **AIA[®] Document C132[™] – 2019****Standard Form of Agreement Between Owner and Construction Manager as Adviser**

AGREEMENT made as of the _____ day of _____ in the year Two Thousand Twenty-Two
(*In words, indicate day, month and year.*)

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

Crandall Independent School District
400 West Lewis Street
Crandall, TX 75114
972.427.6000

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

Gallagher Construction Company, LP d/b/a Gallagher Construction Services
3501 Token Drive, Suite 100
Richardson, TX 75082
972.633.0564

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

Crandall ISD 2022 Bond Program – Crandall Elementary #7, Crandall High School
Expansion, Crandall ISD Stadium

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

WRA Architects, Inc.
12377 Merit Drive, Suite 1800
Dallas, TX 75251
214.750.0077

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.

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232[™]–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132[™]–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. AIA Document A232[™]–2019 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

(Paragraphs deleted)

§ 1.1.9 The Owner identifies the following representative in accordance with Section 5.5 follows (The Owner’s Representative may be changed at the discretion of the Owner at any time.):
(List name, address, and other contact information.)

Crandall Independent School District
400 West Lewis Street
Crandall, TX 75114
Scott Stewart
SStewart@crandall-isd.net
(Paragraphs deleted)
972.427.6000

§ 1.1.11 The Owner shall retain the following consultants and Contractors:
(List name, legal status, address, and other contact information.)

.1 Land Surveyor:

TBD

.2 Geotechnical Engineer:

TBD

.3 Civil Engineer:

TBD

.4 Contractors, as defined in Section 1.4:

TBD

.5 Separate Contractors, as defined in Section 1.4:

TBD

.6 Other, if any:

(List any other consultants retained by the Owner.)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Section 2.5:
(List name, address, and other contact information.)

*(Paragraphs deleted)*Gallagher Construction Company, LP d/b/a Gallagher Construction Services
Von Gallagher, President (von@gallaghertx.com)
Lisa Gallagher, Vice President (lisa@gallaghertx.com)
3501 Token Drive, Suite 100

*(Paragraphs deleted)*Richardson, TX 75082

§ 1.2 The Owner and Construction Manager recognize that the Initial Information may materially change, but such changes will not affect the Construction Manager's services, and the Construction Manager's compensation

§ 1.3 As used herein, the terms "bids", "bidding", and "bidders" shall include "proposal", "proposals", and "proposers" as applicable

§ 1.4 The term "Contractors" or "Multiple Prime Contractors" shall refer and have the meaning of any person or entity who perform Work under contracts with the Owner that are administered by the Construction Manager and Architect. The term "Contractors" or "Multiple Prime Contractors" are used to refer to such persons or entities, whether singular or plural. The terms do not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Construction Manager and Architect.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set and/or described forth in this Agreement and as set forth and/or described in any documents attached to this Agreement or incorporated into this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project. The Construction Manager shall provide sufficient organization, personnel, and

management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the Owner.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect retained by Owner. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall coordinate its services with those services provided by the Owner, the Architect, the Contractors, and the Owner’s other consultants and Separate Contractors. The Construction Manager shall be entitled to rely on, and shall not be responsible for, the accuracy and completeness of services and information furnished by the Owner, the Architect, and the Owner’s other consultants and Separate Contractors. The Construction Manager shall provide prompt written notice to the Owner if the Construction Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.5 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.6 The Construction Manager, as soon as practicable after execution of the Agreement, shall notify the Owner in writing of the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Construction Manager’s proposed key staff members, the Owner may reply to the Construction Manager in writing, stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Construction Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Construction Manager shall not change its key staff members without the Owner’s consent, which shall not be unreasonably withheld or delayed.

§ 2.7 Except with the Owner’s knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager’s judgment with respect to this Project.

§ 2.8 The Construction Manager
(Paragraphs deleted)

shall, at its own expense, purchase from and maintain (or cause to be maintained in the case of consultants to the Construction Manager or other professionals employed or used by Construction Manager) the following insurance in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located for not less than the limits stated below, or greater if required by law, for the duration of this Agreement or for such longer periods as may be required herein:

TYPE OF INSURANCE	LIMIT OF LIABILITY	
Commercial General Liability (CGL)	\$1,000,000.00	Each Occurrence
	\$300,000.00	Damage to Rented Premises – each occurrence
	\$10,000.00	Medical Expense (any one person)
	\$1,000,000.00	Personal and Adv. Injury
	\$2,000,000.00	General Aggregate
	\$2,000,000.00	Products and Completed Operations
CGL coverage shall include liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.		
Automobile Liability	\$1,000,000.00	Combined Single Limit (ea. accident)
Professional Liability	\$1,000,000.00	Per Claim
	\$1,000,000.00	Annual Aggregate
Excess/Umbrella Liability	\$5,000,000.00	Each Occurrence

	\$5,000,000.00	Aggregate
Workers Compensation	Statutory	
	\$1,000,000.00	E.L. Each Accident
	\$1,000,000.00	E.L. Disease – Ea. Employee
	\$1,000,000.00	E.L. Disease – Policy Limit

2.8.1 The required insurance policies, except for professional liability insurance and worker’s compensation insurance, shall and must name the Owner, its officials, employees, and officers as additional insureds. The required insurance policies shall contain no specific limitations on the coverage afforded the Additional Insureds

(Paragraphs deleted)

2.8.2 All insurance and limits of liability required herein shall be in effect as of the earlier of the effective date of this Agreement or the date of the commencement of Construction Manager’s services in relation to the Project and shall remain in effect continuously throughout the term of this Agreement or for such longer periods as are required herein. In the case of Professional Liability insurance, the required coverage and limits of liability shall remain in effect for a minimum period of three (3) years following the completion of the Construction Manager’s services hereunder.

2.8.3 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6 and Article 11 of the AIA A232-2009 of the General Conditions of the Contract for Construction. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella and excess policies.

2.8.4 The Workers’ Compensation, General Liability, Auto, and Umbrella insurance policies required herein shall contain a waiver of subrogation in favor of Owner, its officials, employees, and officers, whether by way of an approved endorsement or otherwise.

2.8.5 Except as otherwise provided in this Agreement, insurance provided pursuant to this Section shall be considered a part of the Construction Manager’s basic services and shall not be a Reimbursable Expense.

§ 2.8.6 The Construction Manager shall notify Owner in writing and by certified mail or personal delivery, within ten (10) days after the Construction Manager knew or should have known of any change that materially affects the provision of the required insurance coverages of any person providing services on the Project.

§ 2.8.7 Because the Construction Manager will be performing on-site services and observations, a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers’ Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, or TWCC-84), showing statutory worker’s compensation coverage for the Construction Manager and its employees providing services on the Project is required for the duration of the Project.

§ 2.9 Upon the written request of the Owner, the Construction Manager shall remove from the Project any employee of the Construction Manager to whom the Owner makes a reasonable objection. The Construction Manager shall replace any such employee with an equally qualified employee in a timely manner.

§ 2.10 Notwithstanding any provision of this Agreement to the contrary, services made necessary as a result of the Construction Manager’s failure to timely provide accurate or complete information, approvals, or clarifications, or to timely render a recommendation/decision, shall be considered Basic Services.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER’S BASIC SERVICES

§ 3.1 Definition

The Construction Manager’s Basic Services consist of those described in this Article 3 of this Agreement, any other duties described as Basic Services of the Construction Manager in this Agreement or in other attachments or exhibits to this Agreement, and further include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 Based on early schematic designs and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for program requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.

§ 3.2.4 The Construction Manager shall expeditiously review design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. The Construction Manager shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.

§ 3.2.5 The Construction Manager shall prepare and periodically update the 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 highlight items that could affect the Project's timely completion.

§ 3.2.6 The Construction Manager shall review recommendations for systems, materials, or equipment for the impact upon cost, schedule, sequencing, constructability, and coordination among the Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts.

§ 3.2.7 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 further development of the design, bidding or negotiating, price escalation, and market conditions. 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 Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.2.8 The Construction Manager shall consult with the Owner and Architect regarding the Construction Documents and make recommendations whenever design details adversely affect constructability, cost, or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide information to the Owner regarding the the safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall advise on the division of the Project into individual Contracts for various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Construction Documents and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination has been provided for phased construction.

§ 3.2.12 The Construction Manager shall make recommendations about, and coordinate the ordering and delivery of, materials in support of the schedule, including those that must be ordered in advance of construction.

§ 3.2.13 The Construction Manager shall assist the Owner in selecting, retaining, and coordinating the professional services of surveyors, geotechnical engineers, special consultants, and construction materials testing required for the Project.

§ 3.2.14 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.15 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 3.2.16 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.17 The Construction Manager, in consultation with the Owner, shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager shall assist the Owner and the Architect with the development of the Bidding Documents, which consist of bidding requirements and proposed Contract Documents. The Construction Manager, with the assistance of the Architect, shall issue Bidding Documents to bidders and conduct pre-bid conferences with prospective bidders. The Construction Manager shall issue the proposed Project schedule with each set of Bidding Documents. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.18 The Construction Manager shall submit a list of prospective bidders for the Architect's review and the Owner's approval.

§ 3.2.19 The Construction Manager, with the assistance of the Architect, shall review bids, and prepare for the Owner bid analyses, and make recommendations to the Owner for the Owner's award of Contracts for Construction or rejection of bids.

§ 3.2.20 The Construction Manager, with the assistance of the Architect, shall assist the Owner in preparing Contracts for Construction. The Construction Manager shall advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 3.2.21 The Construction
(Paragraphs deleted)

Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase

§ 3.3.1 The Construction Manager shall provide on-site administration of the Multiple Prime Contractors whom have Contracts for Construction with the Owner in cooperation with the Architect as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition.

§ 3.3.2 The Construction Phase will commence with the award of the initial Construction Contract or purchase order and, together with the Construction Manager's obligation to provide Basic Services under this Agreement, will end 30 days after final payment to all Contractors is due.

§ 3.3.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

Init.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 The Construction Manager shall review and analyze the construction schedules provided by the Contractors to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss matters such as procedures, progress, coordination, and scheduling of the Work, and to develop solutions to issues identified. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Contractors.

§ 3.3.7 Consistent with the various bidding documents, and utilizing information from the Contractors, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work.

§ 3.3.8 The Construction Manager shall coordinate all tests and inspections required by the Contract Documents or governmental authorities, observe the on-site testing and inspections, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor the approved estimate of Construction Cost. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project and advise the Owner and Architect as to variances between actual and budgeted or estimated costs.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall prepare a Project Application for Payment based on the Contractors' Certificates of Payment.

§ 3.3.12.2
(Paragraphs deleted)

The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager'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 the Contractors are entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.3 The issuance of a Certificate for Payment shall not be a representation that the Construction Manager 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 for the Contractor's own Work, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The issuance of a Certificate for Payment by the Construction Manager constitutes a recommendation for payment and is not legally binding on the Owner.

§ 3.3.13 The Construction Manager shall obtain and review the safety programs developed by each Contractor for purposes of coordinating the safety programs with those of the other Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents endeavoring to guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed, or completed. The Construction Manager, in consultation with the Architect and subject to the ultimate authority of the Owner, may reject Work which does not confirm to the requirements of the Contract Documents.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractors, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations, and requests for information of the meaning and intent of the Drawings and Specifications, and provide its written recommendation. The Construction Manager shall assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if the proposed changes are accepted or required by the Owner, prepare Change Orders or Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.2.2.7.

§ 3.3.19 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the Contractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been **reviewed** by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or Contractors. **The Architect shall have the responsibility for approval of the shop drawings. Time is of the essence in completing the Project. Therefore, the Construction Manager will not use regular mail to send shop drawings and submittals to the Architect. The Construction Manager will use electronic delivery or a courier service, UPS, Federal Express, Airborne, or one of the other next day delivery services for this purpose. Likewise the Owner, shall instruct the Architect to return all shop drawings and submittals to the Construction Manager in the same manner.**

§ 3.3.20 The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples, and other submittals from the Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.

§ 3.3.20.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractors by the Contract Documents, the Construction Manager shall review those submittals for sequencing, constructability, and coordination impacts on the other Contractors. The Construction Manager shall discuss its findings with the Owner and the Architect, and coordinate resolution, as necessary, of any such impacts.

§ 3.3.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the Owner and Architect including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion. The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.21.1 The Construction Manager shall collect, review for accuracy, and compile the Contractors' daily logs; and include them in the Construction Manager's reports
(Paragraphs deleted)
to the Owner.

§ 3.3.22 Utilizing the documents provided by the Contractors, the Construction Manager 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 Owner, Architect, and Contractors. Upon completion of the Project, the Construction Manager shall deliver them to the Owner.

§ 3.3.23 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.24 With the Owner's maintenance personnel, the Construction Manager shall observe the Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.25 When the Construction Manager considers each Contractor's Work or a designated portion thereof substantially complete, the Construction Manager shall, jointly with that Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.26 The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.27 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractors: (1) certificates of insurance ; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractors under the Contract Documents, including warranties and similar submittals.

§ 3.3.28 The Construction Manager shall secure and transmit to the Owner warranties and similar submittals required by the Contract Documents and deliver all keys, manuals, record drawings and maintenance bonds to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment, or a final Application for Payment and final Certificate for Payment, upon the Contractors' compliance with the requirements of the Contract Documents.

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

(Paragraph deleted)

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 The services described in this Article 4 are not included in Basic Services

(Paragraphs deleted)

unless so identified in Article 11 and/or Exhibit "A" to this Agreement, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The Optional Additional Services described under this Section shall only be provided if authorized or confirmed in writing by the Owner. The Owner shall not be liable to compensate the Construction Manager for any Services described in this Article 4 or for any other additional services for which there was no written authorization. If services described under Contingent Additional Services in this Section are required due to circumstances beyond the Construction Manager's control, the Construction Manager shall notify the Owner prior to commencing such services. If the Owner deems that such services described under this Section are not required, the Owner shall give prompt written notice to the Construction Manager. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Construction Manager shall have no obligation to provide those services.

§ 4.2 CONTINGENT ADDITIONAL SERVICES

§ 4.2.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the Owner's schedule.

§ 4.2.2

(Paragraphs deleted)

Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 4.2.3

(Paragraphs deleted)

Providing services made necessary by the termination or default of the Architect or a Contractor, by major defects or deficiencies in the Work of a Contractor, except those defects or deficiencies that should have been identified by the Construction Manager through the Construction Manager's evaluations of the Work as provided by §§3.3.12.2 and 3.3.12.3 above, or by failure of performance of either the Owner or Contractor under a Contract for Construction.

§ 4.2.4 Providing services in evaluating an extensive number of claims submitted by a Contractor or others in connection with the Work.

§ 4.2.5 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.

§ 4.3 OPTIONAL ADDITIONAL SERVICES

§ 4.3.1 Providing services relative to future facilities, systems and equipment.

§ 4.3.2 Providing services to investigate existing conditions or facilities or to provide measured drawings thereof.

§ 4.3.3 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

§ 4.3.4 Providing services required for or in connection with the Owner's selection, procurement or installation of furniture, furnishings and related equipment.

§ 4.3.5 Providing services for tenant improvements.

§ 4.3.6 Providing any other services not otherwise included in this Agreement.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

§ 5.2 The Owner shall establish and update an overall budget for the Project based on consultation with the Construction Manager and Architect, which shall include the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

§ 5.3 If requested by the Construction Manager, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

§ 5.4 The Owner shall retain an architect whose services, duties and responsibilities are described in the **Agreement Between Architect and Owner**, current as of the date of this Agreement. The Terms and Conditions of the Agreement Between the Owner and Architect shall be furnished to the Construction Manager and incorporate the provisions of the A232-2019 that is applicable to this Project.

§ 5.5 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

§ 5.7 At the Owner's absolute and sole discretion, the Owner may furnish legal, accounting and insurance counseling services as may be deemed necessary by the Owner, at its sole discretion, at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractors have used the money paid by or on behalf of the Owner.

§ 5.8 The Owner shall furnish the Construction Manager with a sufficient quantity of Construction Documents, not to exceed five (5) copies.

§ 5.9 The services, information and reports required by this Article 5 shall be furnished at the Owner's expense.

§ 5.10 Prompt written notice shall be given by the Owner to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents. It is specifically understood that Owner shall have no obligation to investigate for the purpose of becoming aware of any faults or defects. The duty of the Owner is limited only to such faults or defects that come to the knowledge of the Owner.

§ 5.11 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement.

§ 5.12

(Paragraphs deleted)

Information or services under the Owner's control that are not equally available to the Construction Manager and are necessary for the progression of the Project shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

ARTICLE 6 COST OF THE WORK

§ 6.1 DEFINITION

§ 6.1.1 Construction Cost shall be the total and final contract sum of all separate contracts for construction for the Project that are approved, accepted, and executed by the Owner, and that has actually been paid by the Owner. Construction Cost shall not include the contract sums of any contracts that have been cancelled or otherwise terminated

§ 6.1.2 Construction Cost does not include the compensation of the Architect and Architect's consultants, costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner. If any portion of the Construction Manager's compensation is based upon a percentage of Construction Cost, then Construction Cost, for the purpose of determining such portion, shall not include the compensation of the Construction Manager or Construction Manager's consultants.

§ 6.2

(Paragraphs deleted)

RESPONSIBILITY FOR CONSTRUCTION COST

§ 6.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's best judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Construction Manager shall be permitted to include contingencies for design, bidding and price escalation, and shall consult with the Architect to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to suggest reasonable adjustments in the scope of the Project, and to suggest inclusion of alternate bids in the Construction Documents to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of any increase in the Contract Sums occurring after execution of the Contracts for Construction.

§ 6.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after submittal of the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

§ 6.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 6.2.3) is exceeded by the sum of the lowest bona fide bids or negotiated proposals plus the Construction Manager's estimate of other elements of Construction Cost for the Project, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Section 9.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 6.2.5 If the Owner chooses to proceed under Section 6.2.4.4, the Construction Manager, without additional charge, shall cooperate with the Owner and Architect as necessary to bring the Construction Cost within the fixed limit, if established as a condition of this Agreement.

§ 6.2.6 Construction support activities, if provided by the Construction Manager, shall be governed by separate contractual agreements unless otherwise provided in Article 11 or 12.

§ 6.2.7 Reimbursable expenses listed in Article 11 and 12 for construction support activities may be subject to trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment which shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

ARTICLE 7 COPYRIGHTS AND LICENSES

(Paragraph deleted)

§ 7.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall, as to the Construction Manager only, be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of the Instruments of Service, except the Construction Manager's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager 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. The Construction Manager is 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 performance of the Construction Manager's services under this Agreement.

§ 7.1.1 All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the 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 derogation of the Architect's copyright or other reserved rights.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other and arising out of or related to this Agreement, within the period specified by applicable law.

§ 8.1.2 INDEMNIFICATION

THE CONSTRUCTION MANAGER SHALL INDEMNIFY AND HOLD THE OWNER AND THE OWNER'S OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL DAMAGES, LOSSES AND JUDGMENTS ARISING OUT OF OR RESULTING FROM THE CONSTRUCTION MANAGER'S PERFORMANCE OF ITS WORK UNDER THIS AGREEMENT, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES RECOVERABLE UNDER APPLICABLE LAW, BUT ONLY TO THE EXTENT THEY ARE CAUSED BY OR RESULT FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSTRUCTION MANAGER, ITS EMPLOYEES AND/OR ITS CONSULTANTS OR RESULT FROM AN INTENTIONAL ACT OR OMISSION, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A CONSULTANT COMMITTED BY THE CONSTRUCTION MANAGER, ITS EMPLOYEES AND/OR ITS CONSULTANTS. THE CONSTRUCTION MANAGER SHALL PROVIDE THE OWNER WITH WRITTEN NOTIFICATION AS TO ANY CIRCUMSTANCES THAT MAY GIVE RISE TO THE CONSTRUCTION MANAGER'S DUTIES OF INDEMNIFICATION PROMPTLY UPON THE CONSTRUCTION MANAGER BECOMING AWARE OF SUCH CIRCUMSTANCES. THE PROVISIONS OF THIS SECTION 8.1.2 SHALL SURVIVE THE COMPLETION OF THE WORK AND/OR THE TERMINATION OF THIS AGREEMENT.

§ 8.1.3 The Construction Manager waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. The Owner waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement to the extent covered by insurance as required herein. This waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement, other than those relating to Construction Manager's duty to indemnify the Owner, shall be subject to mediation as a condition precedent to the initiation of litigation.

§ 8.2.2 Unless the parties mutually agree otherwise, mediation shall be administered in accordance with the following:

- .1 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.
- .2 In the event the Owner and the Construction Manager are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent to the initiation of litigation shall be deemed to have occurred.
- .3 At all times during the course of any dispute resolution process, the Construction Manager shall continue diligently and without delay to perform the services and obligations of this Agreement.

§ 8.2.3 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.

(Paragraphs deleted)

§ 8.3

(Paragraphs deleted)

If the parties do not resolve a dispute through mediation pursuant to Section 8.2, the method of binding dispute resolution shall be litigation in the state district courts of Kaufman County, Texas

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If this Agreement is so terminated, the compensation due to the Construction Manager, if any, shall be limited to the compensation for services actually performed and Reimbursable Expenses actually incurred prior to said termination.

§ 9.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.

§ 9.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.

§ 9.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Construction Manager may terminate this Agreement by giving written notice. Should this Agreement be terminated in accordance with this § 9.3, the compensation due to the Construction Manager shall be limited to compensation for services actually performed and Reimbursable Expenses actually incurred prior to notice of such termination.

§ 9.4 Failure of the Owner to make payments to the Construction Manager in accordance with this Agreement shall be considered substantial nonperformance and cause for termination. Should the Construction Manager elect to so terminate this Agreement, the compensation due to the Construction Manager shall be limited to compensation for services actually performed and Reimbursable Expenses actually incurred prior to notice of such termination.

§ 9.5 If the Owner fails to make payment of undisputed amounts when due the Construction Manager for services and expenses, the Construction Manager may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full of undisputed amounts is received by the Construction Manager within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services for this reason, the Construction Manager shall have no liability to the Owner for delay or damage caused to the Owner because of such suspension of services.

§ 9.6

(Paragraphs deleted)

Init.

The Owner, at its discretion, may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause. In the event of termination for the Owner's convenience, the Construction Manager's compensation shall be limited to compensation for services actually performed and for Reimbursable Expenses actually incurred prior to termination.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 GOVERNING LAW AND VENUE

§ 10.1.1 Governing Law.

This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Texas, without taking into account and without reference to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents.

§ 10.1.2 Venue.

The parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, this Agreement, or any of the Contract Documents shall be in the state district courts of Kaufman County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Kaufman County, Texas.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2019, General Conditions of the Contract for Construction, as modified by the Owner for this Project, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager and the Architect.

§ 10.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run on either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Project Certificate for Payment for acts or failures to act occurring after Substantial Completion.

§ 10.4 INTENTIONALLY OMITTED.

§ 10.5 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement.

§ 10.6 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.7 Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

§ 10.8

(Paragraphs deleted)

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

§ 10.9 Any notice required by or permitted under this Agreement must be in writing unless otherwise provided herein. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement or addressed to the last known address of the intended recipient. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email to the designated representative of each Party, or other commercially reasonable means and will

be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

§ 10.10 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

§ 10.11 The Owner shall have the right to examine, copy, and/or audit the books and other records of the Construction Manager relating solely to this Agreement upon reasonable request to the Construction Manager.

§ 10.12 The Construction Manager will, before any duties are performed on Owner's property, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor as required by Texas Education Code Chapter 22 if the person has or will have continuing duties related to the Project, and the person has or will have direct contact with students. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

Additionally, the Construction Manager will, before any duties are performed on Owner's property where students are regularly present, and at least annually thereafter, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor if the person has or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

The Construction Manager shall assume all expenses associated with the background checks, and shall immediately remove any employee, agent or other person who was convicted of a felony under Title V of the Texas Penal Code or any offense that requires the person to register as a sex offender. No person shall be engaged by the Construction Manager or by any entities with which the Construction Manager contracts, including but not limited to any suppliers or subcontractors, to work on Owner's property where students are regularly present who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;
3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances; or
5. Any offenses involving the sale or distribution of controlled substances.

The Owner shall determine what constitutes "direct contact with students" and "where students are regularly present".

It shall be the responsibility of the Construction Manager and the entities with which the Architect contracts to ensure compliance with this provision.

§ 10.13 All references to "arbitration" in this Agreement, the General Conditions document that pertains this Project, as amended by the Owner, or in any other Contract Document shall be considered as deleted, rendered null and void, and shall be given no effect.

§ 10.14 The Construction Manager shall comply with all policies, regulations and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety.

§ 10.15 The parties hereby agree that 1) if an order for relief is entered on behalf of the Construction Manager, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Construction Manager makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of one or more of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Construction Manager's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner may, at its discretion, (a) request the Construction Manager to provide adequate assurance of future

performance in accordance with the terms and conditions of this Agreement, or (b) terminate this Agreement. In the event that Owner elects to request adequate assurance, the Construction Manager's failure to comply with such request within ten (10) days of delivery of the request to the Owner's satisfaction shall entitle Owner to terminate this Agreement and the Construction Manager's services.

§ 10.16 In the event of any suit or action arising out of or in connection with this Agreement is brought by either Party, whether to enforce the terms hereof, declare rights hereunder, or otherwise, the prevailing party in such action shall be entitled to recover its attorney's fees and court costs from the non-prevailing party.

§ 10.17 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in this Agreement or in any of the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto regardless of who is responsible for its preparation.

ARTICLE 11 COMPENSATION

§ 11.1

(Paragraphs deleted)

Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 11.2

(Paragraphs deleted)

PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 11.2.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service.

§ 11.2.3 If and to the extent that the time initially established in Section 11.9 of this Agreement is exceeded or extended, or if the project duration exceeds twenty-four (24) months for each individual project in 11.6.1 for Notice to Proceed, through no fault of the Construction Manager, compensation for any services rendered in excess of the projected number of months shall be the total fee divided by anticipated duration in months established at the beginning of each project, (which will include all basic services, the CM fee, and General Conditions) plus the Reimbursables set forth in Article 12.

§ 11.3

(Paragraphs deleted)

PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

§ 11.3.1 Payments on account of the Construction Manager's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Construction Manager's statement of services rendered or expenses incurred.

§ 11.4

(Paragraphs deleted)

PAYMENTS WITHHELD

§ 11.4.1 No deductions shall be made from the Construction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractors, or on account of the cost of changes in Work other than those for which the Construction Manager has been found to be liable.

§ 11.5

(Paragraphs deleted)

CONSTRUCTION MANAGER'S ACCOUNTING RECORDS

§ 11.5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§11.6 BASIC SERVICES COMPENSATION

§ 11.6.1 FOR BASIC SERVICES, as described in Article 3 of this Agreement, **for any other duties described as Basic Services in this Agreement, for all duties and services described in other attachments or exhibits hereto as Basic Services, and for all usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors, and any other services included in Article 11 as part of Basic Services, the Owner shall compensate the Construction Manager** as follows:

PROJECTS:

Crandall Elementary #7
Crandall High School Expansions
Crandall ISD Stadium
Crandall ISD Transportation Center
Other Projects as Assigned

FEE SCHEDULE BASED ON PERCENT OF TOTAL PROJECT BUDGET:

\$0 to \$5,000,000	7.00% of Total Project Budget
\$5,000,001 to \$15,000,000	6.80% of Total Project Budget
\$15,000,001 and above	6.65% of Total Project Budget

PROJECT TIMELINE AND FEE PAYMENT SCHEDULE FOR EACH PROJECT TO BE DETERMINED UPON MUTUAL AGREEMENT OF THIS PARTIES HERETO.

*note – once the Owner has approved the project for construction to begin the fee will be fixed, based on the percentages above, at that time.

Payment will be billed accordingly as follows:

3% of the projected fee – Issuing of Schematic Drawings
5% of the projected fee – issuing of Design Development Drawings
7% of the projected fee – Issuing of stamped and sealed contract documents for bid

Upon approval for construction by the District, the remaining 85% will be adjusted to the actual fixed fee and divided in equal monthly payments for the duration of the project.

(Paragraph deleted)

If more than one payment remains after reaching Substantial Completion of any Project, the Owner shall make all remaining payments for that Project in one payment.

§ 11.6.2 Both parties mutually agree this agreement is contingent upon citizens' approval of the Crandall ISD May 2022 Bond package.

Voter Approval: Crandall ISD shall make timely and complete payment to Gallagher Construction Company, LP.

Voter Non-Approval: Crandall ISD shall not be required to make payments to Gallagher Construction Company, LP. Gallagher Construction Company, LP shall not be required to perform duties as Construction Manager and this agreement shall become null and void except that Crandall ISD agrees to employ Gallagher Construction Company, LP to any construction work funded by bond proceeds approved by the Crandall ISD citizens/voters during a period of Thirty-Six (36) months from the date of this agreement.

§ 11.7

(Paragraphs deleted)

COMPENSATION FOR ADDITIONAL SERVICES

§ 11.7.1 FOR ADDITIONAL SERVICES OF THE CONSTRUCTION MANAGER, as described in Article 4, and any other services included in Article 12 as Additional Services, compensation shall be computed as follows:

(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

1. **All direct and indirect expenses with a markup of 5%.**

§ 11.8 REIMBURSABLE EXPENSES

§ 11.8.1

(Paragraphs deleted)

FOR REIMBURSABLE EXPENSES, as listed in Section 12.4 and Exhibit "A" to this Agreement as Reimbursable Costs, these costs will have a markup of 5% of the expenses incurred by the Construction Manager and the Construction Manager's employees and consultants in the interest of the Project.

§ 11.9 ADDITIONAL PROVISIONS

§ 11.9.1 To the extent a significant increase in scope requires services, equipment and personnel not contemplated by Construction Manager for the Original Project Budget, Construction Manager shall be entitled to a further equitable adjustment to the Contract Sum to be agreed upon between the parties.

§ 11.9.2 Payments are due and payable fifteen (15) days from the date of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate determined in accordance with the Texas Prompt Payment Act, Chapter 2251 *et seq.*, Texas Government Code .

§ 11.9.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Construction Manager.

§ 11.10 BUILDERS RISK INSURANCE

Construction Manager will provide Builders Risk Insurance for the duration of each project. Crandall ISD will reimburse Construction Manager for the premiums for the Builders Risk Insurance. In addition, Crandall ISD will be responsible for the deductible on a Builders' Risk claim (\$5,000 per claim all other perils / \$25,000 per claim Flood & Earthquake / \$25,000 per claim Wind & Hail).

§11.11 Non-Reimbursable Costs are the following and the Non-Reimbursable Costs listed in Exhibit "A":

1. Preconstruction Services.
2. All Project Management Staff and On-Site Supervision.
3. Administration staff to manage project's accounting system.
4. Warranty coordination.
5. Vehicle Expenses.
6. On-site office provisions.
7. Mobilization/Demobilization Costs.
8. Telephone Services.
9. Mobile Telephone Services.
10. Office Supplies.
11. On-Site Office Equipment (computers, fax machines, copy machines, etc.).
12. Safety observations.
13. Mechanical, electrical, plumbing quality control provisions.

§11.12 Costs to be paid directly by Owner (with no fee or mark-up to Construction Manager) are the following and the "Costs to be paid directly" listed in Exhibit "A":

1. All electrical, gas, sewer, and water utility costs consumed by the project activities.
2. Fees paid for securing approval of authorities having jurisdiction over the project (impact fees, building permit, inspection fees, etc.).
3. Waste removal costs (*ie.* dumpsters).

4. Plan and addenda printing expenses.
5. Plan and addenda distribution expenses.
6. Material testing and special testing services.
7. Special consulting services.
8. Storm Water Pollution Prevention Plan Permits, preparation costs, and monitoring (EPA/SWPPP).
9. TAS Inspections and Reviews.
10. Public Notices.
11. Security Provisions (if required).
12. Crandall ISD shall secure items 2 and 3 above from the appropriate public utility or public entity in the normal manner.

§11.13 Reimbursable Costs (paid by Owner) with a 5% mark-up from the Construction Manager, ie. Reimbursable Expenses are the following and the "Reimbursable Costs":

1. Temporary Construction Fencing.
2. Temporary Toilets.
3. Builders Risk Insurance.
4. Project Clean-up provisions.
5. Storage Trailers.
6. Clean-up Equipment.
7. Mailing/Shipping provisions.
8. Building protection provisions.
9. Other items necessary for the project not outlined in Sections 12.11 or 12.12 of this Contract.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§12.1 ISRAEL/TERRORIST ORGANIZATION

§12.1.1 Pursuant to Texas Government Code, Chapter 2270, as amended, if Construction Manager 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 Consultant represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

Note: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the above clause in any state contract. Texas Government Code, Chapter 2270 has been amended since the date of the injunction and the requirement of the statute is included above in its amended form. As the statute may not cure the entire breadth of issues addressed by injunction, the Client does not intend to seek enforcement of this this statute until further order of this or higher court having jurisdiction over the issue

§12.1.2 Prohibition of Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign terrorist Organizations. Contractor certifies that it is not a company identified by the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

§12.2 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§12.2.1 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.

§12.2.2 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.

§ 12.3 Pursuant to the requirements of HB 89 and Tex. Govt. Code § 2270.002, Construction Manager affirms that it does not boycott and will not boycott Israel during the term of this Contract.

§ 12.4 Construction Manager affirms that it is not identified on a list prepared and maintained under Tex. Govt. Code §§ 806.051, 807.051 or 2252.153.

§ 12.5 CERTIFICATION OF SENATE BILL 13, SECTIONS 809 and 2274 TEXAS GOVERNMENT CODE Prohibition of Boycott Energy Companies

12.5.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Contractor is a sole proprietor, a nonprofit entity, or a governmental entity; and only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement

§ 12.6 CERTIFICATION OF SENATE BILL 19, SECTION 2274 TEXAS GOVERNMENT CODE

12.6.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement 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 may be amended only by written instrument signed by both the Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document C132-2019, Standard Form Agreement Between Owner and Construction Manager as Adviser, as modified.
- .2 AIA Document
(Paragraphs deleted)
A232-2019 General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified by Owner.
- .3 Certificates of Insurance required of the Construction Manager.
- .4 Any modifications to this Agreement approved by the Parties.
(Paragraphs deleted)
- .5 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract.

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

OWNER *(Signature)*

Dr. Wendy Eldredge, Superintendent
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Lisa Gallagher, Vice President
(Printed name and title)



AIA[®] Document A232[™] – 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

Crandall ISD 2022 Bond Program – Crandall Elementary #7, Crandall High School Expansions, Crandall ISD Stadium

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Gallagher Construction Company, LP d/b/a Gallagher Construction Services
3501 Token Drive, Suite 100
Richardson, TX 75082
972.633.0564

THE OWNER:

(Name, legal status, and address)

Crandall Independent School District
400 West Lewis Street
Crandall, TX 75114
972.427.6000

THE ARCHITECT:

(Name, legal status, and address)

WRA Architects, Inc.
12377 Merit Drive, Suite 1800
Dallas, TX 75251
214.750.0077

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.

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132[™]–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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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), Performance Bond, Labor and Material Bond, the Drawings, the Specifications, all Addenda issued prior to execution of the Contract and all Modifications thereto, 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 Budget Allocation, (4) a Construction Change Directive, or (5) 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 Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.3 **The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. It also includes all supplies, skills, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

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

§ 1.1.5 **Contractors or Multiple Prime Contractors.** The term Contractor(s) or Multiple Prime Contractor(s) shall refer to and mean those persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 **Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 **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.

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

§ 1.1.9 **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.

§ 1.1.10 **Initial Decision Maker.** The Initial Decision Maker is the Architect unless otherwise 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.

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§ 1.1.11 Description of the Parties.

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

Owner	
Architect	
Construction Manager	
Contractor	

§1.1.12 Addenda

Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding documents, including Drawings and Specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents when the Construction Agreement is executed.

§1.1.13 Approved, Approved Equal, Approved Equivalent, or Equal

The terms Approved and Approved Equal relate to the substitution of materials, equipment or procedure in writing by the Architect prior to receipt of bids.

§1.1.14 Abbreviations

N.I.C.	Not in contract. Indicates work not to be done by this Contractor; by Others; By Owner; Existing
AIA	American Institute of Architects
ACI	American Concrete Institute
AIEE	American Institute of Steel Construction
AISC	American Iron and Steel Institute
ASTM	American Society of Testing Materials
AWSC	American Welding Society Code
FS	Federal Specification
NES	National Electrical Code
SPR	Simplified Practice Recommendations
UL	Underwriters Laboratories, Inc.
AISI	American Iron and Steel Institute

§1.1.15 Bidding Documents

The terms "Bid" or "Bidding" shall include Competitive Sealed Proposals, when appropriate. Bidding Documents consist of all documents bound into or referenced in the Project Manual, the Drawings, and Addenda related thereto. The Project Manual contains the Bidding Requirements, Sample Forms, Conditions of the Contract, the Specifications, and a list of Drawings, and Schedules, some of which are bound into the Project Manual (Other Drawings and Schedules are bound separately).

§1.1.16 Miscellaneous Other Words

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

§ 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.

(Paragraph deleted)

§ 1.2.2 Should drawings disagree in themselves or with Specifications and are not clarified by addendum, the better quality or greater amount of Work or materials shall be estimated upon and, unless otherwise ordered by the Architect or Construction Manager in writing, shall be performed and furnished. Figures given on Drawings govern scale measurements, and large-scale details govern small-scale drawings. Specifications determine nature and setting, workmanship, and quality of materials; Drawings establish the design, quantities, dimensions and details; schedules give locations.

(Paragraph deleted)

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

§ 1.2.4 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.

§ 1.2.5 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.

§ 1.2.6 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.

§ 1.2.7 Precedence of the Contract Documents: The most recently issued Document takes precedence over previously issued forms of the same Document. The order of precedence is as follows with the highest authority listed first:

- .1 The Agreement
- .2 The Addenda
- .3 Conditions of the Contract, Drawings, and Specifications shall have equal authority. Should these documents disagree among themselves, the Architect and Construction Manager will select the appropriate method for performing the work at no additional increase in the Contract Cost.

§1.2.8 Similar conditions may be illustrated by a single detailed drawing. The drawing may be subject to minor adjustments as directed by the Architect prior to proceeding with the Work. If discrepancies appear, Contractor shall request interpretation from the Architect through the Construction Manager prior to proceeding with the Work. Contractor shall not make such interpretations by himself, except at his own risk, responsibility and expense.

§1.2.9 Optional Materials, Brands and Processes: When more than one is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified only products of those named manufacturers are acceptable. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be provided by the manufacturer as required for the proper functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable; however, indicated and specified performance and material requirements are minimum, and will be required in addition to standard accessories. The Architect reserves the right to determine the equality of equipment and materials that deviate from any of the indicated and 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 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.

§ 1.5.2 The Contractor, Construction Manager, 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, Construction Manager, 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 Miscellaneous Definitions

§1.8.1 Addenda, Addendum

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

§1.8.2 Alternate Bid(s)

A separate amount stated on the Bid Form that, if accepted by the Owner, will be added to or deducted from the Base Bid. If accepted, the work that corresponds to the alternate bid will become part of the Agreement between Owner and Contractor. Alternative bids shall remain valid for a period of 60 days after receipt of bids, regardless of whether an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

§1.8.3 Base Bid

The Contractor's bid for the Work, not including any Alternatives.

§1.8.4 Contract Time

The period of time established in the Contract Documents for Substantial Completion of the Work. This period of time is not subject to adjustment for weather days. Refer to the Scope of Work Section for specific time for completion of work, providing all contract documents, submittals and other required information.

§1.8.5 Date of Agreement

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted on the first page of the Agreement Between Owner and Contractor and shall be referenced in Performance Bond and Payment Bond forms. See also Date of Commencement of the Work.

§1.8.6 Date of Commencement of the Work

The date of the fully executed Agreement Between Owner and Contractor, or, if agreed to by the Owner in writing, the date a written Notice to Proceed is delivered to the Contractor.

§1.8.7 Date of Final Completion

The end of construction. See paragraph 9.10.

§1.8.8 Date of Substantial Completion

See paragraph 8.1.3.

§1.8.9 Day

See paragraph 8.1.4.

§1.8.10 Notice to Proceed

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

§1.8.11 Punchlist

A comprehensive list prepared by the Contractor prior to Substantial Completion to establish all items to be completed or corrected; this list may be supplemented by the Architect, Construction Manager or Owner. See paragraph 9.8.2.

§1.8.12 Unit Prices

A cost for a unit of work as described in the Contract Documents. If accepted, the Owner may add or deduct Unit Price work at the amounts stated on the Bid Form and such amounts shall not be subject to additional mark up by the Contractor or his subcontractors. Unit prices accepted by the Owner shall be valid through the completion of the Contract. The Owner may elect to reject unit prices prior to executing the Contract. If the unit prices are accepted, they will be incorporated into the Contract. The Owner may elect to reject the unit prices bid without precluding the right to request Changes in the work as described in Article 7 of the General and Supplementary Conditions.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into a Contract, to execute a change order requiring an increase in the Contract Sum, or agree to an extension to the contractual completion date. The Board shall designate, as appropriate, an authorized representative or representatives to act on its behalf during the course of construction. In the event that emergency changes in the scope of the work are required before the Board's next regular meeting or in order to facilitate and expedite the timely completion of the work, the Board's authorized representatives may approve construction changes that do not exceed \$100,000 in increased costs. Any such change shall be confirmed in writing between the Construction Manager and the Board's authorized representatives and notice of such approved changes shall be given to the Board at its next regular meeting. The Board will act as soon as reasonably possible to avoid undue delays in the construction completion date.

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 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.

(Paragraphs 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

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changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

§ 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. The Architect shall endeavor to guard the Owner against defects and deficiencies in the Work.

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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

§ 2.3.6 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.

§ 2.3.7 The Contractor will be furnished, free of charge, 2 copies of the Drawings and Specifications for the execution of the work, unless the Owner and Construction Manager agree that additional copies are appropriate for the proper completion of the Contractor's Work. In that event, Contractor shall be provided with the additional number of copies as determined by Owner and Construction Manager. Contractor can purchase additional sets for the cost of reproduction, postage and handling.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, 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.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails 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 review by the Construction Manager and prior approval of the Architect, and the Construction Manager or 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 Construction Manager's and Architect's and their respective consultants' 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.

§2.6 Owner's Right to Occupy the Project

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

§2.6.2 If such prior use delays completion of the project, the Contractor shall be entitled to extension of time, which claim shall be in writing with supporting data attached.

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, 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 Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and 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.

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

§ 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 Construction Manager and Architect any nonconformity discovered by or made known to the

Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and 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 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 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved.

§ 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, the Construction Manager, and the 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. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303, and Texas Health and Safety Code, Subchapter C, Section 756.021, et. seq.

§ 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. As part of that responsibility, Contractor shall enforce the Owner's alcohol free, drug free, and weapon free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

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

§ 3.3.4 The Contractor shall be responsible for the correct laying out of the Work according to the Contract Documents and written modifications of the Architect and Construction Manager including all necessary leveling and checking. The Contractor shall check the established grades and bench marks, and shall lay out all partition lines and other significant reference lines or points which will enable Contractor to accurately place Contractor's boxes, openings, sleeves, conduits, pipe duct, controls, hangers, inserts and other devices. Subcontractors shall be responsible for laying out Subcontractor's Work from these reference points. Datum reference and control lines for the project will be established by a professional civil engineer engaged by the Owner and coordinated by the Construction Manager. From this reference each Contractor shall be responsible for the Contractor's own layout and dimensions. Any problems occurring between the separate Contractors shall be directed to the Construction Manager. If required, the Architect shall be consulted by the Construction Manager for a decision. Disputes shall be resolved as they occur by the Construction Manager and Architect as applicable.

§ 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, as a requirement of the Contract Documents, may be required to provide installation of materials, systems and equipment furnished F.O.B. by other Contractors on the Project. The Contractor shall accept delivery, unload, store, protect, provide security, distribute and install such materials, systems and equipment and shall document receipt on forms acceptable to the Construction Manager.

§ 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, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 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.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, 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, unless such maintenance is Contractor's responsibility, improper operation, or normal wear and tear and normal usage. If required by the Owner, Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner, Construction Manager and the Architect that the Work will be performed and completed in a good and workmanlike manner and in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required, to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner. The warranties set out in this subparagraph are not exclusive of any other warranties, remedies or guarantees set out in other places in the Contract Documents or implied under applicable law, but are in addition to and not in limitation of any other such warranties, remedies, or guarantees.

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

§ 3.5.3 Except where otherwise stipulated in the Contract Documents and in addition to but without limiting any other warranties that might be contained § 3.5.1 above or in other parts of the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under the Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time.

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

§ 3.5.5 Approximately 11 months after Substantial Completion on each phase or building, the Contractor shall, if requested by the Owner to do so, accompany the Owner, the Construction Manager and the Architect on a complete re-inspection of the Project. The Contractor shall be responsible for correcting of any additional deficiencies observed or reported.

§ 3.5.6 Contractor shall certify, on form(s) provided by the Owner through the Construction Manager, that the project has been constructed in general accordance with the Contract Documents.

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§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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.

§ 3.6.2 The Owner is exempt from the Texas Sales Tax on any purchase of tangible personal property and will issue Certificates of Exemption from the Texas Sales Tax on materials furnished by Contractors on School Construction projects. Failure of the Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor responsible for absorbing the tax.

§ 3.6.3 The Owner shall provide a tax exemption certificate to the Construction Manager and Contractor.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall obtain all permits and approvals, and pay all fees and expenses, including engineering costs, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which modifies the original site drainage plan and requires the issuance of a permit shall be at Contractor's sole cost.

§ 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.

§ 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.

§ 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, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, 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, in consultation with the Construction Manager, 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, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either 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, Construction Manager, 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.

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§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

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

§ 3.8.4 The Contractor shall be authorized to expend allowance funds only as directed by the Construction Manager and 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 Superintendent shall be available on job site during working hours throughout the progress of the Contractor's Work until completion. The Superintendent shall be satisfactory to the Owner and shall not be changed except with the consent of the Construction Manager and the Architect, unless the Superintendent leaves the employment of the Contractor. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner, Construction Manager, or Architect objects to any nominated superintendent.

(Paragraphs deleted)

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, 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. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors. The Contractor shall coordinate the letting of subcontracts, material purchases, shop drawing, product data and sample submissions, delivery of materials and sequence of operations, to conform to the requirements of the Construction Manager's Construction Schedule and shall furnish proof of same as may be required by the Construction Manager. The Contractor shall bring any possible means of shortening the schedule, at no additional costs, to the attention of the Construction Manager. The comprehensive progress schedule for the Project will be a Critical Path Method (CPM) network. The Contractor's Construction Schedule shall indicate the dates for the starting and completion of the various stages, including the placing of material orders, delivery of materials and equipment, submission of shop drawings, product data and samples, processing of shop drawings, product data and samples, and all Work activities, and, shall provide estimates of labor hours, crew sizes, and proposed number of crews to accomplish the Work. The Contractor's Construction Schedule shall be used as the Construction Manager determines in preparation of the Construction Manager's Construction Schedule for the entire project. The sequencing and duration of Contractor activities indicated on the Construction Manager's Construction Schedule may be adjusted by the Construction Manager after a joint review and by mutual agreement.

§ 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 Construction Manager's and Architect's approval. The Architect and Construction Manager'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 Construction Manager and 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 participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule. The Contractor shall attend coordination and progress meetings scheduled and conducted by the Construction Manager to discuss progress, scheduling, coordination requirements, and problems. When required, the Contractor shall furnish information in regard to the Contractor's proposed effort to overcome any incurred delay. This information shall be in a form acceptable to the Construction Manager.

§ 3.10.5 The Contractor shall provide the Owner with such schedules as may be required.

§ 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 Construction Manager, Architect, and Owner, and delivered to the Construction Manager 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 Sections 4.2.10 through 4.2.12. Informational submittals upon which the Architect are 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 Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, 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 reviewed and approved by the Architect. The Contractor shall be responsible for insuring that only 'approved' shop drawings, product data and samples, bearing the stamp of the Architect, are allowed on the Project.

§ 3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data and Samples or similar submittals unless the Contractor has specifically informed the Architect through the Construction Manager in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data and 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 Construction Manager and 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. A registered architect must prepare plans and specifications for all the work governed by Chapter 1051 of the Texas Occupations Code, and a registered engineer must prepare plans, specifications, and estimates for all work governed by Chapter 1001 of the Texas Occupations Code. The Owner, the Architect, and the Construction Manager 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. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 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 Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas designated by the Construction Manager, permitted by law, ordinances, permits and by the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall not use any of the Owner's existing facilities, such as, toilets, cafeteria,

parking areas, power hookup, etc., except with the Construction Manager's written approval. The Contractor shall not, at any time, block or restrict access to the site.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site and shall comply with the Construction Manager's Site Utilization Plan.

§ 3.13.3 The roads, sidings and other transportation facilities at the site, where work under the Contract is being performed, are for the general use and convenience of the Owner. If Contractors are permitted to use them, Contractor must conform to the regulations of the local authorities. If the work of a Contractor requires that such facilities be temporarily discontinued, after obtaining Construction Manager's approval, the work must be performed expeditiously. Contractor shall provide and maintain proper warnings and detour signs at all pedestrian and vehicular closures, intersections, and along detours, directing traffic around closed portions of roadways. Contractor shall, at Contractor's own expense, wherever necessary or required, provide and maintain fences, temporary roadways, temporary cross signs, watchmen, warning lights and take such other precautions as may be necessary to protect life and property. Contractor shall be responsible for all damages occasioned in any way by Contractor's act or neglect. All barricades and obstructions shall be illuminated at night, and all lights shall be kept on from one half hour before sunset until one-half hour after sunrise.

§ 3.13.4 On-site storage space for Contractor's field office trailer, sheds, materials, tools, equipment, and supplies must be coordinated with and approved by the Construction Manager in advance. Contractor's materials, equipment, tools and supplies shall be moved at no cost if their location obstructs or impedes the work of others.

§ 3.13.5 The Owner will provide site survey, selected baselines and benchmarks. The Contractor shall not disturb existing monuments and markers at the site. Should monuments, markers, or both be disturbed by the Contractor, Contractor shall bear the cost of a licensed surveyor engaged by the Construction Manager for the purpose of relocating such monuments or markers. Contractor shall lay out Contractor's work and shall be responsible for the accuracy of all lines, elevations and measurements, grading, utilities, and other work executed under the Contract. Contractor must exercise proper precaution to verify figures shown on Drawings before laying out work. Contractor will be held responsible for any error resulting from Contractor's failure to exercise such precaution

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, coring, fitting, or patching required to complete the Work or to make its parts fit together properly. Contractor shall provide protection of existing Work as required..

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

§ 3.14.3 The Contractor shall not disturb any existing structure, piping, apparatus or other work unless expressly required by the Contract. Where cutting, drilling or removals are required in existing walls, floors or roof construction, the Work shall be done in a manner that will safeguard and not endanger the structure, and shall in all cases be as approved by the Construction Manager and Architect. Prior to any cutting, drilling or removals, the Contractor shall investigate both sides of the surface involved, shall determine the exact location of adjacent structural members by visual examination, and shall avoid interference with such members. The Contractor shall not cut, weld to or otherwise alter any structural member without the written consent of the Architect obtained through the Construction Manager.

§ 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.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect, or their designated agents, 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, Construction Manager, 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, Architect, or Construction Manager. 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 through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, THE OWNER'S OFFICERS, THE OWNER'S AGENTS, THE OWNER'S CONSULTANTS, THE OWNER'S EMPLOYEES, THE CONSTRUCTION MANAGER, THE CONSTRUCTION MANAGER'S CONSULTANTS, THE CONSTRUCTION MANAGER'S AGENTS AND EMPLOYEES, THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND THE ARCHITECT'S AGENTS AND EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES (INCLUDING LOSS OF USE RESULTING THEREFROM), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THE CONTRACT, PROVIDED THAT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 3.18.1 SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT. THE CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, OR HOLD HARMLESS A PARTY OR PARTIES INDEMNIFIED HEREUNDER AGAINST ANY CLAIM CAUSED SOLELY BY (1) THE NEGLIGENCE OR FAULT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, (2) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OR (3) THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE INDEMNITY OBLIGATION SET FORTH HEREIN 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.

(Paragraph deleted)

§ 3.18.2 TO THE FULLEST EXTENT PERMITTED BY LAW, ALL CLAIMS ARISING OUT OF ANY

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BREACH OF THIS CONTRACT BY CONTRACTOR, OR A BREACH OF ANY AGREEMENT RELATING TO THE WORK OR ANY WORK PERFORMED BY ANY SUBCONTRACTOR (OF ANY TIER), OR ANY NEGLIGENT ACT, GROSS NEGLIGENCE, ERROR OR OMISSION BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS (OF ANY TIER), OR ANY PATENT OR COPYRIGHT INFRINGEMENT ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS (OF ANY TIER).

§ 3.18.3 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, THE CONSTRUCTION MANAGER, THEIR OFFICERS, THEIR AGENTS AND THEIR EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, THE CONTRACTOR'S AGENT, OR THE CONTRACTOR'S SUBCONTRACTOR OF ANY TIER, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR SUITS ARE BASED IN WHOLE OR IN PART UPON THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, ITS OFFICERS OR ITS EMPLOYEES. THE INDEMNITY REQUIRED BY THIS PARAGRAPH 3.18.2 IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1.

§ 3.18.4 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 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.

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

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

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

§ 3.19 Prevailing Wage Rates

§ 3.19.1 The Contractor and each subcontractor who performs any portion of the Work must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code. The Contractor shall require all subcontractors to comply with the provisions of this Section 3.19 and its subparts.

§ 3.19.2 The Contractor and each subcontractor who performs any portion of the Work must pay not less than the prevailing wage rates attached as Exhibit "1" to this A232-2019 General Conditions document, as modified by the Owner, and incorporated herein as if fully set forth. In the event that a prevailing wage scale/schedule is not attached to the Agreement, the wage scale/schedule shall be the most recent scale/schedule adopted or determined by the United States Department of Labor for projects located in Kaufman County, Texas. 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.

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- .1 A Contractor or subcontractor who violates the provisions of these Sections 3.19.1 and/or 3.19.2 shall pay to the 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.

§ 3.19.3 Records: The Contractor and each subcontractor shall keep a record showing

- .1 the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the Work; and
- .2 the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

Owner may request samples of Contractor's and Subcontractor's payrolls at its discretion. Contractor and Subcontractor shall deliver such samples promptly upon demand.

Payment greater than the prevailing wage is not prohibited.

§ 3.19.4 In the event of a complaint of a breach of the requirements in Sections 3.19, 3.19.1 or 3.19.2 above, or any of the Section subparts of § 3.19, the Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation. Owner may conduct, at its discretion, wage-related interviews of any worker at the sites of the work without prior warning to the Contractor or Subcontractor.

§ 3.20 Antitrust Violations

§3.20.1 To permit the Owner to recover damages suffered; in antitrust violations, the Owner/Contractor Agreement shall include the following; "Contractor hereby assigns to Owner any and all claims for overcharges associated with this contract which are 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 his agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 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 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

§ 4.1.3 The Owner shall notify the Contractor when duties, responsibilities, or limitations of authority of the Construction Manager or Architect have been modified.

§ 4.1.4 If the employment of the Construction Manager or Architect is terminated, the Owner may employ a successor construction manager or architect whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and 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. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.; However, the Construction Manager will not be the guarantor of the Contractor's performance.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 **Communications.** The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager 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 Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect except where the Owner determines they should be made directly. Communications by and with Subcontractors and suppliers shall be through the Contractor. Except where the Owner determines they should be made directly. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. 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, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Architect and/or Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them 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 Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive from the Contractor and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples, and transmit them to the Architect. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Budget Allocations and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Budget Allocations or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, Specifications, Addenda, Budget Allocations and other Modifications and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents. In the event the Owner is required to pay the Construction Manager or Architect additional compensation because of Contractor's failure to meet the conditions for Substantial or Final Completion, the Contractor shall be responsible for paying or reimbursing the Owner for said additional costs.

§ 4.2.17 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 Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.18 The Architect will interpret and make recommendations on matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor. The

Architect's response to such requests will be made in writing within five (5) days from receipt of a written request from the Construction Manager, Owner, or Contractor.

§ 4.2.19 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 so rendered in good faith.

§ 4.2.20 The Owner's decisions on matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect. The Architect will review and respond in writing, through the Construction Manager, to requests from Contractors for information about the Contract Documents. The Architect's response to each request 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 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 All subcontractors and suppliers shall be obtained in accordance with Chapter 2269 of the Texas Government Code.

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

§ 5.2.3 If the Owner, Construction Manager or Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued

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

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

§ 5.3 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, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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.

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; 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 Contractor shall promptly notify Owner, Construction Manager and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other material man or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, 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. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 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, including persons or entities under separate contracts not administered by the Construction Manager, 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's own forces, Separate Contractors, Construction Manager and other 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

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by the Contract Documents and under the general coordination of the Construction Manager. Copies of Contract Documents relating to these separate contracts shall be available to the Contractor, upon request, for Contractor's information in carrying out the above provisions. Contractor shall become familiar with the site and shall review the Contract Documents covering Contractor's work and the work of other Contractors and the Owner's forces. Coordination of Contractor's work with the work of others shall be the responsibility of the Contractor. The Contractor shall be held responsible for any damage or misfit resulting from Contractor's neglect to comply with the foregoing. All Contractors on the project shall have equal rights on the premises for the performance of their work, but shall follow the sequence established by the progress schedule and coordination instructions issued by the Construction Manager.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and 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 or other Contractors' 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 Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction. If the Contractor notifies the Construction Manager, in writing, that another Contractor is failing to coordinate his work with the Work of the Contractor as directed, the Construction Manager will promptly investigate. If Construction Manager finds Contractor's claim to be true, Construction Manager will promptly issue such directions to the other Contractor as the situation may require. The Construction Manager shall not, however, be liable for any damages suffered by Contractor by reason of the other Contractor's failure to promptly comply with the directions issued by the Construction Manager or by reason of another Contractor's default in performance; it being understood that the Construction Manager does not guarantee the responsibility or continued efficiency of any Contractor. Costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefore.

§ 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, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. Claims and other disputes and matters in question between Contractor and Other Contractors shall be subject to the Dispute Resolution provisions of Article 15 provided the other Contractors have reciprocal obligations. The Contractor shall cooperate with the Owner, Architect and Construction Manager and other Contractors working on this project in order to avoid interference, inconvenience or damage. To aid in avoiding conflicts, the Contractor, without additional charge, shall make all reasonable modifications in the work as may be directed by the Construction Manager and Architect. In the event the Contractor's operations cause any damage, interference, or inconvenience to work being carried out under any other Contract, the Contractor shall restore, replace, rectify, or otherwise make good any damage to the satisfaction of the Construction Manager, Architect and to the other Contractors. Should the responsible Contractor fail to comply, the corrective work will be performed by others at the expense of the responsible Contractor.

If the Contractor installs any work prior to proper coordination, or in such manner as to cause interference with the work of others, Contractor shall arrange for removal of, or arrange for necessary modifications to, the work. Any such action is subject to the approval of the Construction Manager and Architect and shall be at no additional cost

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other 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 Construction Manager, with notice to 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 Budget Allocation, 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 Budget Allocation shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager 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.

§ 7.2 Budget Allocations

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

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

§ 7.2.2 The Contractor shall be allowed the following percentages for Project general conditions, overhead and profit for each change authorization to be considered by the Construction Manager and Architect for changes to be incorporated into the Work. Applicable mark-ups shall be in addition to the cost of direct labor expense, cost of materials, services and equipment as may be required for the Work.

- .1 For Work Performed by the Contractor's Work Forces:

Payroll Burden-(Direct Labor Cost) MAXIMUM ALLOWED (FICA, Medicare, FUTA, TEC, Worker's Compensation Insurance and General Liability Insurance)	46%
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General Conditions: (Supervision, project management, engineering, estimating, detailing, layout, shop drawings, miscellaneous tool and material expense, field office expense, warranty, and cleanup)	10%
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Profit or Fee:	5%
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- .2 For Work Performed by Contractor's Subcontractors:

Overhead and Profit:	5%
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§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager 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:

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- .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 Construction Manager 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. The term "reasonable expenditures" shall not include any of the items set forth below:

1. Salaries or other compensation of the Contractor's and Subcontractor's personnel at the Contractor's and Subcontractor's principal office and branch offices.
2. Expenses of the Contractor's and Subcontractor's principal and branch offices other than the field office on the project.
3. Any part of the Contractor's and Subcontractor's capital expenses, including interest on the Contractor's and Subcontractor's capital employed for the work.
4. Overhead and general expenses of any kind, except as described in this paragraph
5. Costs due to the negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable including but not limited to the correction of defective or nonconforming work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

The cost of any item not specifically and expressly included in the items described in this paragraph. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager 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;
- .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 at rates that are no greater than market rates in the locale of the Work at the time of the Work. Unless otherwise established in the Contract, the rental value of the Contractor's own equipment shall not be more than the normal local rental rate for similar equipment;
- .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.

§ 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 Construction Manager 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 as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (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 litigation; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.1.1 Time extensions for labor disputes shall be limited to the reasonable time required to establish separate entrances to the project in the event of labor disputes. In the event the Construction Manager, Architect, or Owner

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provide the Contractor with a separate entrance to the site, a time extension for labor disputes shall be limited to a maximum of one day following the establishment of separate entrances. It is the duty and responsibility of the Contractor to ensure that his or her employees enter through separate gates if same are established.

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

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

§ 8.3.4 The Contractor shall have no claim for compensation or damages for delays or hindrances to the Work occasioned by any act or omission of the Owner or their agents, or separate contractors, other provisions of the contract notwithstanding, and further agrees that the Contractor shall be fully compensated for all delays solely by an extension of time

§ 8.3.5 The following is a requirement of the Contract and will be incorporated in the Agreement Between Owner and Contractor as if fully set forth therein:

The work to be performed under this Contract shall be commenced and substantially completed as set out in the Agreement Between Owner and Contractor, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence of this contract and that the pecuniary damages which would be suffered by the Owner, if the Contractor does not complete all work called for in the contract documents by the specified date, are in their very nature difficult of ascertainment.

It is therefore expressly agreed as a part of the consideration inducing the Owner to execute this contract that the Owner may deduct from the final payment made to the Contractor a sum equal to a certain amount, as stipulated hereinbelow, for each calendar day that the completion of the work is delayed beyond the agreed date for Substantial Completion of the work as stated in the Agreement Between Owner and the Contractor. 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 legally 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 damage being caused by additional compensation to personnel, for loss of interest on money and other miscellaneous increased costs, all of which are difficult of exact ascertainment.

Contract Amount	Amount of Liquidated Damages
Over \$25,000	\$500 per calendar day
\$5,000-24,999	\$100 per calendar day
\$1,000-\$4,999	\$50 per calendar day
Less than \$1,000	No liquidated damages

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.

§ 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

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, 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 Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's

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Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or 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 At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Construction Manager 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, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and 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.

§ 9.3.2 Payments will be made on account of materials or equipment 1) incorporated in the Work and 2) suitably stored at the site or 3) suitably stored at some off site location provided the following conditions are met for offsite storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 Surety must agree, in writing, to each request for payment.
- .4 The Contractor, at Owner's option, must bear the cost of the Owner's and Architect's expenses related to visiting the offsite storage area.

Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured) and transportation to the site for those materials and equipment stored off the site.

§ 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.

§ 9.3.4 Contractors shall submit one electronic copy of the application using AIA Document G702- and G703-1992 Application and Certificate for Payment. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form.

§9.3.5 Monthly Payment Procedures: The following payment procedures shall be adhered to for all monthly payments:

- A. Field review of Application: Submission to Construction Manager
 - (1) An on-site review of the application shall occur on or about the 5th day of the month. A representative of the Architect, Owner, Construction Manager and Contractor shall attend the review meeting.
 - (2) Ideally, the review shall be of a rough draft of the Application. Corrections and/or changes

resulting from the field review shall be incorporated into the formal typed Application.

- (3) The Contractor shall deliver the corrected Application to the Construction Manager's office no later than the tenth (10th) of the month.

B. Architectural Processing:

- (1) In addition to normal processing, the Architect shall verify that the corrections and/or changes resulting from the field review have been incorporated into the formal typed Application.

C. Processing:

- (1) Owner forwards Contractor's check to the Construction Manager for distribution on or about the 30th day of the month.
- (2) The Owner, through the Construction Manager, may withhold release of the Contractor's check if the Contractor has been notified in writing by the Construction Manager that it owes money to
 - (i.) another Contractor for damages to the other Contractor's work;
 - (ii.) the Construction Manager for reimbursement of temporary cleanup labor charges; or
 - (iii.) other items for which the Contractor is responsible for reimbursement but has not responded to request for payment.

D. Project Application Amounts:

- (1) All Contractors shall prepare an estimated Schedule of Payments at the beginning of each project.
- (2) Along with the regular Applications for Payment, a projected amount for the following month shall be submitted.

§ 9.3.6 Retainage: Until substantial completion of the Contractor's work, the Owner will pay 95% of the amount due the Contractor on account of progress payments

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager 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 Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due

all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager 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 Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.2.2 The Architect will affix his signature to the same form described in Paragraph 9.3.4 to signify his certification of payment, provided the application is otherwise satisfactory.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager'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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation 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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or 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 Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the 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 or other 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 failure of the Contractor to submit a written plan indicating the necessary action to regain lost time on the construction schedule for the completion of the Work within the Contract Time.
- .9 persistent refusal to adequately pursue the Work with the necessary supervision, labor, materials, equipment or services required to execute the Work in accordance with the Project schedule and to avoid delays in the Work to be performed by other Contractors and the Owner's forces;
- .10 Contractor's refusal, neglect or failure to provide certificates of or other evidence of compliance with all the requirements of Article 11 to the Owner and the Construction Manager;
- .11 Contractor or Contractor's subcontractors' acts or inactions resulting in the filing of a lien against the Project;
- .12 Contractor or Contractor's subcontractors' refusal to follow the Project Safety Program issued as a Contract Document;
- .13 failure to maintain record drawings as specified; or
- .14 failure to properly submit a response to a RCQ (Request for Change Quotation) within thirty (30) days of receipt thereof.
- .15 failure to properly submit stored material documentation

§ 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 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, 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 Construction Manager, and both will reflect such payment on the next Certificate for Payment.

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project 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 Construction Manager and Architect.

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

§ 9.6.3 The Construction Manager 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 Owner, Construction Manager and Architect 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, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier.

§ 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 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.

(Paragraph deleted)

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's 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 Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager 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 the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Construction Manager 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 list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, 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. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.5.1 After the date of Substantial Completion of the Project as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion.

§ 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 and Construction Manager shall jointly 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 after consultation with the Construction Manager.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their 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 Construction Manager's and Architect's final Certificate for Payment or Project 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 through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (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 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. Prior to final payment, the Contractor shall submit in duplicate to the Architect the following completed forms:

- .1 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706 on Contracts less than \$25,000.
- .2 Contractor's Affidavit of Release of Liens, AIA Document G706A on Contracts less than \$25,000..
- .3 Consent of Surety to Final Payment on Contracts \$25,000 and above..
- .4 Subcontractor's Guarantee notarized
- .5 Subcontractor's Lien Releases notarized
- .6 Each Contractor shall submit a notarized affidavit stating that no asbestos building materials were used.
- .7 Maintenance and instruction manuals. Three sets of each bound in a 3" ring binder.
- .8 Record drawings if required by Contractor's Scope of Work..
- .9 Final list of subcontractors (AIA Document G805).

Documents identified as affidavit 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

§ 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 Budget Allocations affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and 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 through the Construction Manager 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 by Owner.

§ 9.10.4

(Paragraphs deleted)

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.

(Paragraph deleted)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 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;

Init.

- .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;
- .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; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

§ 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.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. 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, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any 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, Construction Manager and Architect.

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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.

§ 10.3 Hazardous Materials

§ 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, Construction Manager 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, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager 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, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager 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 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.

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

§ 10.3.5 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.

(Paragraphs deleted)

§ 10.4 Asbestos or Asbestos Containing Materials

§ 10.4.1 Certification of Asbestos Free Project:

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

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

§ 10.4.1.3 Final Payment shall not be made until this letter of certification has been received.
Add the following Paragraph 10.5 and subparagraph 10.5.1 :

§ 10.5 Lead Free Materials in Potable Water System

§ 10.5.1 Prior to payment of retainage and final payment, the Contractor involved with the potable water system shall furnish a notarized statement certifying that the potable water system is "lead free".

§ 10.6 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§11.0 GENERAL

§11.0.1 The Owner will be furnished an acceptable certificate of insurance, copies of all policies and endorsements, as requested, and an insurance checklist prior to the commencement of any Work.

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§11.0.2 The insurance shall contain a provision that at least sixty days prior written notice shall be given to the Owner in the event of cancellation, material change, or non-renewal.

§11.0.3 Insurance shall be underwritten by a company rated not less than "A" and "VII" in Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on AM Best's website, www.ambest.com.

§11.0.4 There shall be a hold harmless agreement in which the Contractor assumes liability on the contract and holds the Owner, Construction Manager and Architect harmless.

§ 11.1 Contractor's Liability Insurance

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

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

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

§ 11.1.2.1 The insurance required by this Article 11 shall contain no specific limitations on the coverage afforded the Additional Insureds.

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

§ 11.1.4 In addition to any other obligations required herein, the Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Construction Manager, the Construction Manager's consultants, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner

as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§11.1.5 In each contract for construction, the following language shall be included:

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

Duration of the project includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

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

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

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

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

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

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

No later than seven days after receipt by the contractor, a new certificate of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knows of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing 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.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

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

Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;

Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

Obtain from each other person with whom it contracts, and provide to the contractor:

- a) A certificate of coverage, prior to the other person beginning work on the project; and
 - b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. Notify the governmental entity in writing by certified mail or personal delivery, within ten 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.

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

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

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

As used in this §11.1.5, the term "governmental entity" shall mean the Owner.

§11.1.6 CONTRACTOR'S LIABILITY INSURANCE

Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- 1) Premises operations
- 2) Independent Contractor's Protective
- 3) Products and Completed Operations
- 4) Contractual-Including Specified Provisions for the Contractor's Obligations under Paragraph 3.18
- 5) Owned, Non-Owned and Hired Vehicles
- 6) Broad Form Coverage for Property Damage
- 7) Personal Injury including liability assumed by contract

The Contractor's insurance as required to meet the above potential liabilities shall be written on an "Occurrence" basis and not for less than the following specified limits or that which is required by law, which is ever greater:

TYPE OF COVERAGE	Min. Limits of Liability
1. Workers' Compensation Employer's Liability	<i>Statutory</i> \$500,000.00 Each Accident \$500,000.00 Disease Policy Limit \$500,000.00 Disease Each Employee
2. Comprehensive General Liability	<i>Comprehensive, Contractual, Independent Contractors, Personal Injury</i> \$1,000,000.00 Personal & Adv. Injury \$1,000,000.00 Each Occurrence \$2,000,000.00 General Aggregate Per Project \$ 5,000.00 Med. Expenses (any one person) \$ 50,000.00 Fire Damage \$1,000,000.00 Each Occurrence \$1,000,000.00 Aggregate
3. Automobile Liability	\$1,000,000.00 Combined Single Limit
The Automobile Liability needs to include coverage for loading and unloading hazards.	
4. Umbrella Excess Liability	\$1,000,000.00 Each Occurrence \$1,000,000.00 Aggregate
This coverage shall be combined single limits bodily injury, including death, and property damage liability insurance as an excess of the primary coverage required and to follow form of the primary coverage required.	
5. Independent Contractor's Liability -	Same limit as #2 above.
6. Products and Completed Operations - \$2,000,000.00 completed operations aggregate commencing with issuance of final certificate of payment, and remaining in effect for (1) year.	
7. Property Damage Liability Insurance will provide X, C and U coverage as applicable.	
8. Contractual Liability - Same limits as #2 above.	

POLICY ENDORSEMENTS

Each insurance policy required under sub paragraph 11.1.5 shall include the following conditions by endorsement to the policy:

Each policy shall require that sixty (60) days prior to the expiration, cancellation, non-renewal, endorsement reducing or restricting coverage or any other material change in coverage, a written notice thereof shall be given to OWNER by Certified Mail to: OWNER, c\o Gallagher Construction Company, 3501 Token Drive,

Suite 100, Richardson, Texas 75082.

The Contractor shall also notify OWNER within 24 hours after receipt of any notices of expiration, cancellation, non-renewal or material change in coverage it receives from its insurer by Certified Mail to the aforementioned Assistant Superintendent of Administration at the same address.

The term District shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments, and offices of OWNER and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of OWNER.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by OWNER, to any future coverage, or to OWNER's Self-Insured Retention's of whatever nature. The Contractor's policy is considered Primary and Non-Contributory with respects to the additional insureds - OWNER, ARCHITECT AND CONSTRUCTION MANAGER.

OWNER, ARCHITECT and CONSTRUCTION MANAGER shall be named additional insured on the Commercial General Liability and Umbrella and Business Auto Policies. With respect to the Commercial General Liability policy, ISO form CG 20 1011 85 or its equivalent or broader will be attached to the policy and continue in force 1 year commencing after the issuance of the final payment certificate.

WAIVER OF SUBROGATION

The Contractor's Workers' Compensation, Commercial General Liability, Umbrella and Business Auto policies shall include a Waiver of Subrogation rights for the loss or damage against OWNER, ARCHITECT, AND CONSTRUCTION MANAGER shall be to extent same is covered by insurance.

FORM OF CERTIFICATE

The form of Certificate shall be Accord Form 25S. Furnish to the Construction Manager and Owner copies of any endorsements that are subsequently issued amending coverage or limits.

Contractor shall not commence work at site under this Contract until he has obtained all required insurance and submitted appropriate policies and/or certifications.

Certificate Holder: OWNER
c/o Gallagher Construction Services
3501 Token Drive, Suite 100
Richardson, Texas 75082

§ 11.2 Owner's Liability Insurance

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

(Paragraphs deleted)

§ 11.3 Property Insurance

§ 11.3.1 Unless otherwise provided, the Owner may, at its sole discretion, purchase and maintain (or cause to be purchased and maintained), in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

The Insurance required by Article 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are used in the performance of the work, but not incorporated in the

permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires minimum deductibles, and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles.

§11.3.1.3.1 There will be a \$2000.00 deductible for each loss to be paid on a prorated basis between each Contractor having an interest in the loss, such prorated share to be determined by the Construction Manager.

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining 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, the Owner shall waive all rights in accordance with the terms of

Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Intentionally Omitted.

§ 11.3.7 Waivers of Subrogation. The Contractor waives all rights against (1) against the Owner and any of the Owner's subcontractors, sub-subcontractors, agents and employees each of the other, and (2) the Construction Manager, 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 the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Contractor shall cause the policies to provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 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 five 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.

§ 11.4

(Paragraphs deleted)

Performance Bond and Payment Bond

(Paragraphs deleted)

§ 11.4.1 The Contractor shall furnish a separate performance and a payment bond, each in the full amount of the Contract, said bonds covering faithful performance of the Contract and payment of obligations arising there under. Surety companies must be authorized to write surety bonds in Texas and any such surety bond must comply with the requirements of Article 7.19-1, Texas Insurance Code.

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

§11.4.3 The Contractor shall deliver the required Bonds to the Owner through the Construction Manager not later than the 5th day after the date that the Contract is presented to the Contractor. All Bonds will be reviewed by the Construction Manager for compliance with the Contract Documents prior to the execution of the Contract. In the event that Construction Manager has any questions concerning the sufficiency of the bonds, Construction Manager shall refer the bonds to Owner or Owner's representative for decision.

§11.4.4 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 attorney. The name, address,

and telephone number of a contact person for the Bonding Company shall be provided.

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

§ 11.4.6 If, at any time during the contract, the Cost of the Work increases, by 25% or more or as determined by District Designee, above the amount of the bonds originally provided by the Contractor, through change order or otherwise, the Contractor shall, within five (5) days of the increase in the Cost of the Work, provide the Owner with a new Performance Bond and new Payment Bond, each in an amount sufficient to cover the current total amount of the Contract, including the new increased Cost of the Work.

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 Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their 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 Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or 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 Construction Manager or 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 Construction Manager's and 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, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5 and all costs for doing so will be assessed against the Contractor, and Owner's actions to correct the nonconforming Work will not constitute a waiver of any warranties or rights the Owner might possess. The deadlines for certain actions required herein of the Contractor are as follows:

- .1 The Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of defect and providing the proposed schedule to conduct corrective work within twenty-four (24) hours of receipt of the Owner's written notice. Corrective work shall not interfere with the Owner's normal operation and use of the Work, unless expressly approved by the Owner.
- .2 For corrective work which is not a life safety issue or which will not, by the nature of the defect, cause subsequent damage to the building or other Work, corrective work shall be completed within seven (7) days.

- 3 For corrective work which by its nature may cause subsequent damage to the building or other Work, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days. The Contractor shall appropriately complete all corrective work relative to subsequent damage caused by a defect.
- 4 For corrective work which affects services to, and ordinary use of the Building, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days.
- 5 The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.

§ 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, Separate Contractors, or other 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.

§ 12.3 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 and Venue

§ 13.1.1 Governing Law.

The Agreement, the Contract, and the Contract Documents shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents.

§ 13.1.2 Venue.

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of Kaufman County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Kaufman 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 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, Construction Manager, 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 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. This may apply to materials proposed for use, materials already delivered to the Project, or materials already incorporated into the Work. 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 Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and 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 Construction Manager, 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 Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and 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 Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense. Any materials which fail to meet the requirements established by the Contract Documents shall not be used whether or not previously approved by the Architect. If such materials have been delivered to the Project, they shall be removed. If the materials have already been incorporated into the Work, the Construction Manager or the Architect may order the materials removed, or, at the discretion of the Owner, through the Construction Manager and Architect, the materials may be permitted to remain in place providing the Contractor agrees to a proper deduction from the Contract Sum.

§ 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 Construction Manager for transmittal to the Architect. The Contractor shall maintain a file of all test reports. At the completion of the Project, the Contractor shall submit these reports to the Owner in an Appendix to the Operations and Maintenance Manual.

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing. Neither the observations of the Architect or the Construction Manager in their Administration of the Construction Contract, nor inspections, tests or approvals by persons other than the Contractor, shall relieve the Contractor from Contractor's obligation to perform the Work in accordance with the Contract Documents.

§ 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

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 at the place where the Project is located.

§ 13.6 Audit Rights

The Contractor relating to this Contract, at any time deemed necessary by the Owner. This right of the Owner is limited to books and other records relating to work performed by the Contractor on a cost plus fee basis.

§ 13.7 Equal Opportunity

§ 13.7.1 The Contractor shall maintain policies of employment as follows:

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

§ 13.7.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

§ 13.8 Certification of Proper Hazardous Waste Disposal

§ 13.8.1 Contractor shall submit to the Owner certification that all hazardous waste, trash, debris, etc. has been disposed of in a manner which is in strict compliance with all current requirements of the Environmental Protection Agency (EPA), State, County, City and Local districts and authorities.

§ 13.9 Texas Accessibility Standards

Contractor shall submit to the Owner certification that all work installed by Contractor is in strict compliance with all requirements and regulations of the Texas Accessibility Standards and that Contractor, at the Contractor's sole expense, shall be responsible for correcting all non-compliant work at any time, during construction or after substantial completion, when notified by Owner that Contractor's work is not in compliance.

§ 13.10 The Contractor will, before any duties are performed on Owner's property, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor as required by Texas Education Code Chapter 22 if the person has or will have continuing duties related to the Project, and the person has or will have direct contact with students. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

Additionally, the Contractor will, before any duties are performed on Owner's property where students are regularly present, and at least annually thereafter, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor if the person has or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

The Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee, agent or other person who was convicted of a felony under Title V of the Texas Penal Code or any offense that requires the person to register as a sex offender. No person shall be engaged by the Contractor or by any entities with which the Contractor contracts, including but not limited to any suppliers or subcontractors, to work on Owner's

property where students are regularly present who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;
3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances; or
5. Any offenses involving the sale or distribution of controlled substances.

The Owner shall determine what constitutes "direct contact with students" and "where students are regularly present".

It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

§13.11 Pursuant to the requirements of HB 89 and Tex. Govt. Code § 2270.002, Contractor affirms that it does not boycott and will not boycott Israel during the term of this Contract.

§13.12 Contractor affirms that it is not identified on a list prepared and maintained under Tex. Govt. Code §§ 806.051, 807.051 or 2252.153.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 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;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or 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, 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.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work actually executed, as well as reasonable overhead and profit. In any event, the amount paid to the Contractor under this § 14.1.3 shall not exceed the 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 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, Construction Manager and 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 to complete the Work in a diligent, efficient, workmanlike or timely manner;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 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 or does not fully comply with a material obligation under 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. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and 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 within thirty (30) days after demand by the Owner. The obligation for payment contained in this §14.2.4 shall survive termination of the Contract.

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

- .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 this Contract.

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor's compensation and/or damages shall be limited to payment for the Work actually executed to the date of termination in accordance with the payment terms set out in the Agreement, and reasonable and necessary costs incurred by Contractor for demobilization of Contractor's personnel as a direct result of such early termination, which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of the Contractor's unearned fee, overhead or profit, or any other amounts. .

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.

§ 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.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by Contractor, shall be initiated by notice to the Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by the Contractor under this Section 15.1.3.1 shall 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.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

§ 15.1.5 Claims for Additional Cost. 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.

§ 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 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. 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 Sum by reason of such delays or disruptions.

§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor waives Claims for consequential damages arising out of or relating to this Contract. This waiver includes

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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 waiver is applicable, without limitation, to all consequential damages due to Contractor'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.

Init.

§ 15.2 Initial Decision

§ 15.2.1 Claims shall be referred to the Initial Decision Maker for initial decision/recommendation to the Owner. 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/recommendation shall be required as a condition precedent to mediation of any Claim unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision/recommendation having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide or make recommendations concerning disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) submit a schedule to the parties indicating when the Architect expects to render its recommendation; (3) recommend rejection of the Claim in whole or in part, stating reasons for the recommended rejection; (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect shall notify the surety, if any, of the nature and amount of 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.

§ 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.

§ 15.2.5 The Initial Decision Maker's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, 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 serve as the Initial Decision Maker's **recommendation** for the resolution of a Claim but shall not be final and binding on the parties. Upon receipt of the initial decision, the Owner will make its final decision concerning the Claim. The Owner may take any action with regard to the Claim and the initial decision as it deems appropriate, including but not limited to rejecting, approving, or modifying the Initial Decision Maker's recommendation. If an affected party disagrees with the Owner's final decision, the party may request non-binding mediation of the Claim and, if the parties fail to resolve their dispute through mediation, proceed to litigation.

(Paragraphs 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 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Any and all of Contractor's claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to non-binding mediation as a condition precedent to litigation.

§ 15.3.1.1 Notwithstanding any provision in the Contract Documents to the Contrary, the Owner may, at any time and with no conditions precedent, assert a Claim, dispute, or other matter in controversy against the Contractor or contend that the Contractor has committed a material breach of this Agreement and request mediation as provided by this Section 15.3, or, at the Owner's sole discretion, proceed directly to litigation against the Contractor. Claims that the Owner may possess against the Contractor are not required to be submitted to the Initial Decision Maker.

§ 15.3.2 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. If the parties have not selected a mutually-acceptable mediator at the time the request for mediation is made, then the requesting party may suggest a mediator. The non-requesting party has 10 days after receipt of the request to respond to the requesting party in writing either accepting the mediator

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identified by the requesting party, or suggesting a different mediator. If such notice is not timely made, then the mediator suggested by the party requesting mediation will be deemed the selected mediator. If a different mediator has been suggested, and the parties are unable to agree on a mediator within 10 days after the notice suggesting a different mediator is given, then the parties shall request the Initial Decision Maker to select a mediator, and this selection will be binding on both parties. The request may be made concurrently with the filing of litigation proceedings but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

(Paragraphs deleted)

§ 15.4 LITIGATION

§ 15.4.1 For any Claim or other dispute of any kind between the parties, the method of "binding dispute resolution" shall be litigation in the exclusive venue described in § 13.1.

§ 15.4.2 All references to "arbitration" in the General Conditions or in any other Contract Document shall be considered as deleted, rendered null and void, and shall be given no effect.

ARTICLE 16 ADDITIONAL PROVISIONS

16.1 The Contractor shall certify in writing that no materials used in the work contain lead or asbestos materials 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 Project Manual related to Contract Closeout.

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

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

16.4 The Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests, encumbrances, statutory or common law claims filed by the Contractor, suppliers, subcontractors, or anyone claiming by, through, or under the Contractor, suppliers or subcontractors for items covered by payments made by the Owner to Contractor.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION

17.1 Pursuant to Texas Government Code, Chapter 2270, as amended, if Consultant 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 Consultant represents and warrants to the Owner that the Consultant does not boycott Israel and will not boycott Israel during the term of this Agreement.

Note: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the above clause in any state contract. Texas Government Code, Chapter 2270 has been amended since the date of the injunction and the requirement of the statute is included above in its amended form. As the statute may not cure the entire breadth of issues addressed by injunction, the Client does not intend to seek enforcement of this statute until further order of this or higher court having jurisdiction over the issue

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17.2 Prohibition of Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign terrorist Organizations. Contractor certifies that it is not a company identified by the Texas Comptroller as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

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.

ARTICLE 19 CERTIFICATION OF SENATE BILL 13, SECTIONS 809 and 2274 TEXAS GOVERNMENT CODE Prohibition of Boycott Energy Companies

19.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended. This section does not apply if Contractor is a sole proprietor, a nonprofit entity, or a governmental entity; and only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement

ARTICLE 20 CERTIFICATION OF SENATE BILL 19, SECTION 2274 TEXAS GOVERNMENT CODE

20.1 In accordance with Texas Government Code Chapter 2274, Contractor verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (ii)

will not discriminate during the term of the contract against a firearm entity or firearm trade association. This section only applies if: (i) Contractor has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement; and does not apply: (i) if Contractor is a sole proprietor, a non-profit entity, or a governmental entity; (ii) to a contract with a sole-source provider; or (iii) to a contract for which none of the bids from a company were able to provide the required certification.





Crandall Independent School District Board of Trustees

Board Meeting Date: March 7, 2022
Agenda Item: Monthly Financial Reports
Agenda Section: N/A
Administrator Responsible: Mike White, Chief Financial Officer

Summary/Background Information:

Statement of Revenues, Expenditures, & Changes in Fund Balance
Tax Collection Report
Monthly Investment Report

Administrative Recommendations:

No recommendation is necessary.

**STATEMENT OF REVENUES, EXPENDITURES, & CHANGES IN FUND BALANCE
GENERAL FUND
MONTH ENDING FEBRUARY 28, 2022**

		<u>Amended</u>	<u>YTD</u>	<u>Percent</u>
		<u>Budget</u>	<u>Rev / Exp</u>	<u>Rev / Exp</u>
Revenue:				
5700	Local & Intermediate Sources	14,493,800	14,142,167	97.6%
5800	State Program Revenue	35,026,000	19,586,784	55.9%
5900	Federal Program Revenue	150,000	167,717	111.8%
	Total Revenues	<u>49,669,800</u>	<u>33,896,668</u>	<u>68.2%</u>
Appropriations:				
11	Instruction	26,907,800	13,801,090	51.3%
12	Library & Media Services	761,386	400,376	52.6%
13	Curriculum & Staff Development	841,839	502,305	59.7%
21	Instructional Leadership	722,133	309,892	42.9%
23	School Leadership	3,227,398	1,586,042	49.1%
31	Guidance, Counseling & Evaluations Serv	1,641,959	789,294	48.1%
32	Social Services	100,023	48,156	48.1%
33	Health Services	664,281	325,761	49.0%
34	Student Transportation	2,558,688	1,095,694	42.8%
36	Co-Curricular & Extra Curricular Activities	1,955,317	975,701	49.9%
41	General Administration	2,412,763	1,282,459	53.2%
51	Maintenance & Operation	4,444,496	2,290,820	51.5%
52	Security & Monitoring Services	720,377	384,395	53.4%
53	Data Processing Services	1,320,627	747,217	56.6%
61	Community Services	23,820	19,521	82.0%
81	Facilities Acquisition & Construction	5,610,550	3,636,086	64.8%
99	Other Intergovernmental Charges	200,000	78,155	39.1%
	Total Appropriations/Expenditures	<u>54,113,457</u>	<u>28,272,964</u>	<u>52.2%</u>
Net Change in Fund Balance		(4,443,657)	5,623,704	
Fund Balance - September 1 (Beginning)		<u>14,071,626</u>	<u>10,888,932</u>	
Fund Balance - August 31 (Ending)		<u>9,627,969</u>	<u>16,512,636</u>	

CRANDALL ISD
856406.76
FOOD SERVICE FUND 240
MONTH ENDING FEBRUARY 28, 2022

		<u>Amended</u>	<u>YTD</u>	<u>Percent</u>
		<u>Budget</u>	<u>Rev / Exp</u>	<u>Rev / Exp</u>
Revenue:				
5700	Local & Intermediate Sources	746,228	247,601	33.2%
5800	State Program Revenue	11,852	600	0.0%
5900	Federal Program Revenue	1,411,052	1,840,475	130.4%
	Total Revenues	<u>2,169,132</u>	<u>2,088,676</u>	<u>96.3%</u>
Appropriations:				
35	Food Services	2,154,132	1,414,646	65.7%
51	Maintenances	15,000	9,725	64.8%
	Total Appropriations/Expenditures	<u>2,169,132</u>	<u>1,424,371</u>	<u>65.7%</u>
Net Change in Fund Balance		<u>-</u>	<u>664,305</u>	

**CRANDALL INDEPENDENT SCHOOL DISTRICT
STATEMENT OF REVENUES, EXPENDITURES, & CHANGES IN FUND BALANCE
INTEREST & SINKING
MONTH ENDING FEBRUARY 28, 2022**

	<u>Amended Budget</u>	<u>YTD Rev / Exp</u>	<u>Percent Rec / Exp</u>
Revenue:			
5700 Local & Intermediate Sources	7,558,203	7,808,469	103.3%
5800 State Program Revenue	1,423,600	1,628,853	114.4%
Total Revenues	<u>8,981,803</u>	<u>9,437,322</u>	<u>105.1%</u>
Appropriations:			
71 Debt Services	8,981,803	2,507,603	27.9%
Total Appropriations/Expenditures	<u>8,981,803</u>	<u>2,507,603</u>	<u>27.9%</u>
Net Change in Fund Balance	<u>-</u>	<u>6,929,719</u>	

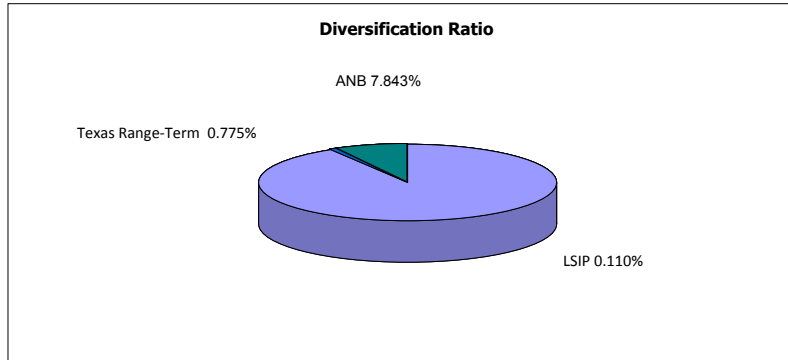
**Tax Collection Report
Month Ending February 28, 2022**

MAINTENANCE AND OPERATIONS															
	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUNE</u>	<u>JULY</u>	<u>AUG</u>	<u>YTD</u>	<u>BUDGET</u>	<u>PERC</u>
CURRENT	\$ 26,531.96	\$ 6,261.16	\$ 477,610.01	\$ 1,402,674.58	\$ 9,984,283.89	\$ 1,331,893.99							\$ 13,229,255.59	\$ 12,806,729.00	103.30%
PRIOR YR	\$ 13,167.17	\$ 3,719.16	\$ 291,566.21	\$ 43,422.46	\$ 12,823.58	\$ 40,005.78							\$ 404,704.36	\$ 85,000.00	476.12%
PEN & INT	\$ 5,497.75	\$ 3,891.45	\$ 1,408.52	\$ 2,658.87	\$ 4,763.25	\$ 4,199.87							\$ 22,419.71	\$ 60,000.00	37.37%
TOTAL	\$ 45,196.88	\$ 13,871.77	\$ 770,584.74	\$ 1,448,755.91	\$ 10,001,870.72	\$ 1,376,099.64	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,656,379.66	\$ 12,951,729.00	105.44%

INTEREST AND SINKING															
	<u>SEP</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUNE</u>	<u>JULY</u>	<u>AUG</u>	<u>YTD</u>	<u>BUDGET</u>	<u>PERC</u>
CURRENT	\$ 15,166.31	\$ 3,579.03	\$ 273,859.02	\$ 804,285.84	\$ 5,724,933.54	\$ 763,700.76							\$ 7,585,524.50	\$ 7,000,000.00	108.36%
PRIOR YR	\$ 6,577.00	\$ 1,934.79	\$ 150,899.21	\$ 20,837.63	\$ 7,073.41	\$ 21,258.92							\$ 208,580.96	\$ 300,000.00	69.53%
PEN & INT	\$ 3,026.20	\$ 2,064.81	\$ 767.86	\$ 1,427.98	\$ 2,520.17	\$ 2,364.94							\$ 12,171.96	\$ 158,203.00	7.69%
TOTAL	\$ 24,769.51	\$ 7,578.63	\$ 425,526.09	\$ 826,551.45	\$ 5,734,527.12	\$ 787,324.62	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,806,277.42	\$ 7,458,203.00	104.67%

MONTHLY INVESTMENT REPORT
February 28, 2022

		Average Annualized Interest Rate	Diversification Ratio	Beginning Balance	Increases to Cash	Decreases to Cash	Interest	February 28, 2022 Ending Balance
Lone Star Investment Pool	General Operating			24,582,908.05	2,876,347.58	(4,000,000.00)	2097.71	23,461,353.34
	Debt Service			13,750,712.94	787,324.62	(2,507,000.00)	1123.2	12,032,160.76
	Construction			26,566,074.85		(3,482,000.00)	2153.02	23,086,227.87
	% Funds Available invested in LSIP	0.110%	91.382%	64,899,695.84	3,663,672.20	(9,989,000.00)	3,276.22	58,579,741.97
TexPool	General Operating			-				0.00
	Debt Service			-				0.00
	% Funds Available invested in Logic	0.000%	0.000%	-				0.00
Texas Range-Term	General Operating - TexasDAILY	0.002%		496,675.33				496,675.33
	General Operating - CD Program	0.350%						0.00
	% Funds Available invested in Texas CLASS	0.850%	0.775%	496,675.33		-		496,675.33
American National Bank	General Operating	0.120%		847,550.68	6,274,849.33	(6,160,622.95)	80.14	961,857.20
	Payroll Clearing	0.120%		722,456.85	3,226,463.84	(3,164,546.49)	36.76	784,410.96
	Debt Service	0.120%		2,408.41	2,507,000.00	(2,506,303.34)	0.23	3,105.30
	Black and Gold	0.120%		-				0.00
	Student Activity	0.120%		174,789.84	14,404.99	(11,779.68)	14.80	177,429.95
	Construction	0.000%		350,674.16	3,482,000.00	(732,013.30)	132.05	3,100,792.91
	Workers Comp	0.000%		1.00	6.00	(6.00)		1.00
	% Funds Available invested in Bank of Texas		7.843%	2,097,880.94	9,229,874.83	(6,414,648.81)	183.84	5,027,597.32
Fund Totals	General Operating			25,927,134.06	6,102,811.42	(7,164,546.49)		24,919,885.87
	Activity			174,789.84	14,404.99	(11,779.68)	14.80	177,429.95
	Workers Comp			1.00	6.00	(6.00)	0.00	1.00
	Debt Service			13,753,121.35	5,383,347.58	(5,988,303.34)	2,153.25	12,035,266.06
	Construction			26,916,749.01	3,482,000.00	(4,214,013.30)	2,285.07	26,187,020.78
	Payroll Clearing			722,456.85	3,226,463.84	(3,164,546.49)	36.76	784,410.96
	GRAND TOTAL			67,494,252.11	18,209,033.83	(20,543,195.30)	4,490	64,104,014.62



Note to Board of Trustees:

All investments for month end for 02/28/2022 have been made in compliance with board policy and the Public Funds Investment Act.

Mike White
CFO