

## **SUPPLEMENTARY CONDITIONS TO THE AIA DOCUMENT A201-2017 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

The following supplements modify the “General Conditions of the Contract for Construction”, AIA Document A201, Sixteenth Edition, 2017. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. As appropriate, for purposes of this Request for Proposal, the term “Bid” shall mean “Proposal” and the term “Bidder” shall mean “Offeror”, wherever they appear in the Construction Documents. The term “Contractor” shall include a Construction Manager-at-Risk.

### **ARTICLE 1 -- GENERAL PROVISIONS**

#### **1.1 BASIC DEFINITIONS**

##### **1.1.1 THE CONTRACT DOCUMENT**

Delete Section 1.1.1 in its entirety and substitute the following:

**1.1.1** 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 Payment Bond, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to propose, instructions to Proposers, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor’s Proposal or portions of Addenda relating to proposal requirements).

To the extent any provision in the Supplementary Conditions to these AIA Document A201-2017 General Conditions, issued by Owner, conflicts with any provision in the Supplementary Conditions issued by the Architect; the Supplementary Conditions to these AIA Document A201-2017 General Conditions issued by Owner shall control.

##### **1.1.3 THE WORK**

Add the following sentence at the end of this section:

It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

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

Add the following Sections:

- 1.2.1.2** Precedence of the Contract Documents: The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as “1”.
- .1** Contract Modifications (such as Change Orders) signed by the Contractor and Owner.
  - .2** The Agreement. (AIA Document A101-2017)
  - .3** The Supplementary Conditions
  - .4** The General Conditions of the Contract for Construction
  - .5** Addenda, with those of later date having precedence over those of earlier date
  - .6** Drawings and Specifications

Should these Documents disagree in themselves, the Architect and Owner will select the appropriate method for performing the Work, to facilitating avoiding increase in the Contract cost.

**1.2.1.3** Relation of Specifications and Drawings: To be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the most expensive combination of quality and quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect and Owner.

## **1.6 NOTICE**

Delete the text of Section **1.6.1** in its entirety and substitute the following:

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

Delete the text of Section **1.6.2** in its entirety.

Add Section **1.9** as follows:

## **1.9 MISCELLANEOUS OTHER DEFINITIONS**

### **1.9.1 ADDENDA, ADDENDUM**

Documents issued by the Architect prior to execution of the Owner Contractor Agreement for this Project that modify or clarify the Proposal Documents. All addenda become a part of the Contract Documents.

### **1.9.2 ALTERNATE PROPOSAL(S)**

A separate amount stated on a separate Proposal Form which, if accepted by the Owner, will be added to or deducted from the Base Proposal. If accepted, the work that corresponds to the alternate proposal will become part of the agreement between Owner and Contractor. Alternate proposals shall remain valid for the same period of time as the Base Proposal after receipt of proposals, regardless if an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

### **1.9.3 APPROVED, APPROVED EQUIVALENT, APPROVED EQUAL, OR EQUAL**

The terms Approved, Approved Equivalent, Approved Equal, and Or Equal, relate to the substitution of products or systems approved in writing by the Architect. Refer to Paragraph 3.4.2, Substitution of Products and Systems, for procedures which must be followed after award of contract. The substitution procedure process to be followed prior to receipt of proposals is described in the Instructions to Bidders.

### **1.9.4 BASE PROPOSAL**

The Contractor's proposal for the Work, not including any Alternates.

### **1.9.5 CONTRACT TIME**

The period of time which is established in the Contract Documents for Substantial Completion of the Work. This period of time is subject to authorized adjustments as enumerated in the Contract Documents.

### **1.9.6 DATE OF AGREEMENT**

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted in 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 Work.

### **1.9.7 DATE OF COMMENCEMENT OF THE WORK**

The date of a written Notice to Proceed to the Contractor for a given portion of the Work. This date constitutes day zero (0) of the stated Contract Time. The Notice to Proceed will be issued after the District has received and validated the Contractor's Payment Bond, Performance Bond and Insurance.

### **1.9.8 DATE OF FINAL COMPLETION**

The end of construction. See AIA Document A201, Section 9.10.

### **1.9.9 DAY**

The following days are referenced in the documents:

- .1 Calendar Days. Extensions of time granted for Regular Work Days lost, if any, will be converted to Calendar Days.
- .2 Holidays: The days officially recognized by the construction industry in this area as a holiday; normally limited to the observance days of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after and Christmas Day.
- .3 Regular Work Days: All calendar days except holidays, Saturdays, and Sundays. Requests for extensions of time shall be requested on the basis of Regular Work Days, and those days, if approved, will be converted to calendar days by multiplying by a factor of one and four-tenths (1.4).
- .4 **No extensions of the Contract Time will be granted due to inclement weather, except as provided in Section 8.3.1.**

### **1.9.10 NOTICE TO PROCEED**

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

### **1.9.11 PROVIDE**

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

### **1.9.12 PUNCH LIST**

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 or Owner. See AIA Document A201, Section 9.8.

### **1.9.13 UNIT PRICES**

A cost for a unit of work as described in the Contract Documents. The Owner may add or deduct Unit Price work at the amounts stated on the Proposal Form and such amounts shall not be subject to additional mark up by the Contractor or his subcontractors."

## **ARTICLE 2 – OWNER**

### **2.1 GENERAL**

Delete the text of Section 2.1.1 in its entirety and substitute the following:

**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. All parties understand that only the Board of Trustees for the Owner acting as a body corporate has the authority to bind the Owner with respect to all matters requiring the Board's approval under current policy of the Board of Trustees for the Owner, including, but not limited to, Change Orders. Except as otherwise provided in Section 4.2.1, the Architect does not have

authority to bind the Owner with respect to matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

Delete the text of Section **2.1.2** in its entirety.

## **2.2 EVIDENCE OF THE OWNER'S FINANCIAL ARRANGEMENTS**

After the first sentence of Section **2.2.1**, delete the remainder of Section **2.2.1** in its entirety.

Delete Sections **2.2.2** and **2.2.3** in their entirety.

## **2.3 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

Delete Section **2.3.6** in its entirety and replace it with the following:

**2.3.6** The Contractor will be furnished free of charge 25 copies of the Drawings and 25 copies of the Project Manual. These copies may have been used during the Bid/Proposal process and it is the Contractor's responsibility to determine their completeness and to request replacement of any missing portions. Additional new copies will be furnished at the cost of reproduction, postage, and handling.

## **2.5 OWNER'S RIGHT TO CARRY OUT THE WORK**

Delete the text of Section **2.5** in its entirety and substitute the following:

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails, after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the actual cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to the prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days of receipt of written notice from the Owner therefor.

Add Section **2.6** as follows:

## **2.6 OWNER'S LACK OF LIABILITY TO THIRD PARTY**

**2.6.1** The Owner is not responsible for the acts and/or omissions of, or contractually involved with, any subcontractors, suppliers of labor or materials, and/or their respective employees or agents or any other third-party claimants. Such claimants shall not constitute third party beneficiaries under this contract. The Contractor and/or his Surety solely shall deal with, take responsibility for, and be liable to such parties under this Contract. Contractor will indemnify and defend the Owner from any legal actions against Owner for unpaid bills of subcontractors.

Add Section **2.7** as follows:

## **2.7 OWNER'S RIGHT TO OCCUPY THE PROJECT**

**2.7.1** 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 yet have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents. If the Contractor determines that said occupancy may cause a delay to the completion of the project, he shall notify the Owner in writing immediately.

**2.7.2** Refer to Article 11 Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

**2.7.3** If Contractor has not completed the obligations of the Contract Documents by the dates established by subsequent Amendments to the Agreement Between Owner and Construction Manager, the Owner shall have the right to occupy or use the entire project.

## **ARTICLE 3 -- CONTRACTOR**

### **3.1 GENERAL**

Add Section **3.1.4** as follows:

**3.1.4** The Contractor must be fully qualified under any state or local licensing laws for Contractors in effect at the time and at the location of the work. The Contractor is responsible for determining that all of his subcontractors and prospective subcontractors are duly licensed in accordance with the law.

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

Delete the last sentence of Section **3.2.4** in its entirety and substitute the following:

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 provided such errors, inconsistencies, omissions, differences, or nonconformities could not have been ascertained from a careful study of the Contract Documents.

Add Sections **3.2.5**, **3.2.6** and **3.2.7** as follows:

**3.2.5** The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the work and his determination that the work of all major subcontractors, to allow the subcontractor to demonstrate his understanding of the documents to the Architect and to allow the subcontractor to ask for any interpretation he may require.

**3.2.6** If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed on him by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Sections 3.2.5, 3.2.6 and 3.7 before additional services are performed.

**3.2.7** 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 in writing, providing substantiation for his position. Any necessary changes, including substitutions of materials, shall be accomplished by appropriate Modification.

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

Delete the last sentence of Section **3.3.1** in its entirety and substitute the following:

If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, but only to the extent the Owner would be responsible for any such losses or damages under state and/or federal law.

Add Sections **3.3.4** and **3.3.5** as follows:

**3.3.4** The Contractor is especially cautioned to coordinate the routing of mechanical and electrical items prior to commencing these operations.

**3.3.5** Contractor shall bear sole responsibilities for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq. On trench excavations in excess of 5 feet in depth, Contractor shall pay a qualified engineer, experienced in the engineering design and preparation of drawings and specifications for compliance with state requirements for trenching and shoring, to prepare and professionally seal detailed drawings and specifications directing Contractor in the safe execution of trenching and shoring.

**3.3.6** Any time that the Contractors' 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 are on site, the work shall be supervised by a qualified employee of the Contractor.

### **3.4 LABOR AND MATERIALS**

Delete Section **3.4.2** in its entirety and replace it with the following:

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

- .1 If, after award of contract, the Contractor or one of his Subcontractors, or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate Modification.
- .2 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products on the Work in place of those specified only under the conditions set forth in specification referring to Product Options and Substitutions.
- .3 Requests for substitution, received by the Architect later than forty five (45) days after "Notice to Proceed" or "Date of Commencement of the Work" (whichever occurs first), may result in additional costs to the Owner. Contractor agrees to reimburse the Owner through deductive Change Order to the Contract, for all costs associated with such requests.
- .4 By making request for substitutions based on Subparagraph 3.4.2 above, the Contractor
  - .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equivalent or superior in all respects to that specified, and is suitable for the intended purpose;
  - .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
  - .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
  - .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- .5 Substitution requests shall be submitted on the forms included herein and in accordance with the process established in specification referring to Product Options and Substitutions.

Add the following Sections after Section **3.4.3**

- 3.4.3** .1 State law prohibits possession and/or use of alcohol and tobacco products on school property at all times.
- .2 State law prohibits weapons or firearms on school property.
- .3 There shall be zero tolerance for fraternization with students, teachers and any other school district personnel, Contractor will immediately remove any employee that violates this provision from the project.
- .4 No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

### **3.5 WARRANTY**

Delete the text of Section 3.5.1 in its entirety and substitute the following:

**3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new, unless the Contract Documents require or permit otherwise. The contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of 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 cause by abuse, material alteration to the Work not executed by the Contractor, insufficient maintenance or maintenance not in compliance with written instructions therefor, operation not in compliance with written instructions therefor, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Add Sections **3.5.3**, **3.5.4** and **3.5.5** as follows:

**3.5.3** In the event of failure in the Work, including a specified product, whether during construction, or the correction period (which shall be one (1) year from the Date of Substantial Completion, except where a longer period as specified), the Contractor shall take prompt and appropriate measures to assure correction or replacement of the defective Work or any portion thereof, including manufactured products, whether notified by the Owner or the Architect. Upon correction of warranty items, the Contractor shall provide the Owner and Architect with written notification of said correction. This obligation shall survive acceptance of the Work under the Construction Contract.

**3.5.4** The Contractual Correction Period for this Project is one (1) year from the date of Substantial Completion, except for any extended warranties as specified within the Contract Documents. Items of Work not completed until after the deadline for Substantial Completions shall have their warranties (general and any extended warranty periods) extended by the period of time between the deadline for Substantial Completion and the actual completion of the Work. Such warranties shall be submitted to the Owner in writing, documenting such time extensions. This correction period shall not restrict or modify extended warranties called for or provided on systems, equipment or other specific portions of the Work.

**3.5.5** The Contractor shall accompany the Owner and Architect for a complete reinspection of the Project approximately eleven (11) months after the Date of Substantial Completion and shall promptly complete any observed or reported deficiencies in the Work, including any uncompleted Punch List items or outstanding and incomplete warranty items. The contractor shall provide written notification to the Owner and Architect when said Punch List items and/or additional deficiencies observed have been corrected. This obligation shall survive acceptance of the Work under the Construction Contract.

### **3.6 TAXES**

Delete Section **3.6** in its entirety and substitute the following:

The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract may be exempted by issuing to suppliers an exemption certificate in lieu of tax. Exemption certificates comply with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate

issued in lieu of tax shall be subject to State Comptroller of Public Accounts Ruling No. 95-0.09, as amended. Failure by the Contractor or Subcontractors to take advantage of the Owner's exemption and to obtain such exemption certificate shall make him responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the Owner.

### **3.7 PERMITS, FEES, NOTICES AND COMPLIANCES WITH LAWS**

After Section 3.7.1, add the following Sections:

- 3.7.1**
- .1 The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
  - .2 The Contractor shall pay directly all temporary utility charges (excluding permanent power), utility district/company inspection fees, temporary tap charges, and temporary water meter charges and any other similar fees assessed by jurisdictional authority having control over this Project. The Contractor shall secure and pay for all governing authorities' permit fees.
  - .3 Fees payable to the Texas Department of Licensing and Regulation (TDLR) for document review relative to the Elimination of Architectural Barriers Act shall be paid by the Owner and the Architect will submit the documents to the TDLR for review and approval.
  - .4 The Contractor shall pay for all measures required for the SWPPP.

### **3.8 ALLOWANCES**

Delete Section 3.8 in its entirety and substitute the following:

**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 and approve in writing. All unused allowance amounts shall be credited back to Owner, along with any markups included in the Contract Sum on such unused amounts.

### **3.9 SUPERINTENDENT**

Delete Section 3.9.1 in its entirety and substitute the following:

**3.9.1** The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work, including Punch List work. The superintendent and project manager shall represent the Contractor, and unless provided otherwise in Section 3.1.1, communications given to the superintendent or project manager shall be binding as if given to the Contractor.

### **3.10 CONTRACTOR'S CONSTRUCTION AND SUBMITTAL SCHEDULES**

Delete Section 3.10.1 and substitute the following:

**3.10.1** Within 30 days of being awarded an Amendment, the Contractor shall prepare and submit for the Owner and Architect's review, a construction schedule for the Work, with critical path clearly defined. The schedule shall not exceed time limits current under the Contract Documents. For further schedule requirements refer to specification section regarding project schedules in the Project Manual.

Add the following clause to Section 3.10.2:

**3.10.2** Requirements for the submittal schedule are outlined in the specifications. 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 the Contract Sum or extension of the Contract Time based on the time required for review of submittals.

Add Section 3.10.4 as follows:



**3.10.4** The Contractor shall submit to the Architect, with each monthly Application for Payment; a copy of the progress schedule updated to reflect the current status of the project. The Contractor shall take whatever action necessary to assure that the project completion schedule is met.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

Add Section **3.11.1** as follows:

**3.11.1** The Contractor shall post all Addenda on Construction Documents prior to commencing work in the site.

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

At Section **3.12.5**, add the following Sections:

**3.12.5 .1** If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent resubmittal. Additional service charges as outlined in 3.2.6 may be charged by the Architect in this event.

**.2** The Architect will take no action on Shop Drawings, Product Data, and Samples that have not first been certified, by stamped, signed notation, as having been checked and approved by the Contractor for use in the Work, or that are not specifically required by the Contract Documents.

At Section **3.12.7**, correct the word “approved” in the last line to read “accepted”.

At Section **3.12.8**, correct “Architect’s approval” in the last line to read “Architect’s acceptance”.

At Section **3.12.9**, correct “Architect’s approval” in the last line to read “Architect’s acceptance” and add the following Section:

**3.12.9.1** Deviation from the requirements of the Contract Documents indicated on shop Drawings, Product Data, and Samples, does not constitute the required notification “in writing.”

Add Sections **3.12.11** and **3.12.12** as follows:

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

**3.12.12** The Contractor shall submit digital PDF’s of Shop Drawings, Product Data, and similar submittals in the proper format according to the procedures stipulated within the Contract Documents. Digitally submitted Shop Drawings will be reviewed and marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or resubmittal as required. Contractor corrections or revisions shall be resubmitted to the Architect in accordance with same procedures. The digitally marked up prints will be retained by the Architect and his consultants. Samples shall be submitted directly to the Architect for review.

Add Section **3.12.13** as follows:

**3.12.13** The Contractor shall provide MEP coordination drawings within a schedule mutually agreed upon by the Team and prior to installing the Work, showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by code, or in keeping with good construction practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at ¼ inch per foot minimum scale and shall include invert elevations and

sections required to meeting intended purpose. The Contractor may propose an alternate method of accomplishing MEP coordination. If the alternate method is approved by the Team, it may be utilized.

### **3.14 CUTTING AND PATCHING**

Add Section **3.14.3** as follows:

**3.14.3** Leave all chases, holes and openings, straight and true, of proper size, and cut them into existing work as may be necessary for the proper installation of the work. Consult with all Subcontractors concerned, regarding proper locations and size. In case of conflict between requirement for cutting and patching and any other requirement of the Work, submit request for direction before proceeding with the Work. In case of failure to leave or cut them in the proper place, openings shall be cut afterward at no expense to the Owner. No excessive cutting will be permitted, nor shall any piers or other structural members be cut without prior approval. After such work has been installed, satisfactorily and carefully fit around, close up, repair, patch, and point up all cuts. Work shall be done with proper tools by workmen of the particular trade to which work belongs and shall be done without extra expense to the Owner. No description of specific cutting, patching, digging, etc., required for the work under a Specification Section that may be required for the proper accommodation of that work to the work of other trades shall relieve the Contractor from responsibility described above.

### **3.15 CLEANING UP**

Add Section **3.15.3** as follows:

**3.15.3** Prior to the Architect's inspection for Substantial Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site.

### **3.18 INDEMNIFICATION**

Delete Sections **3.18.1** and **3.18.2** in their entirety and replace them with the following:

**3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY DEFEND AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF EVERY TIER, EVEN IF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES.**

**FOR ALL CLAIMS NOT ADDRESSED IN THE ABOVE PARAGRAPH, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES AND (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE WORK TO BE PERFORMED UNDER THIS AGREEMENT, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.**

**3.18.2** It is understood and agreed that Subparagraph 3.18 above is subject to, and expressly limited by, the terms and conditions of TEX. CIV. PRACT. & REM. CODE ANN. 130.001-130.005 (Vernon Supp. 1989), as amended or modified, or any successor statute. Contractor shall not be obligated under

Subparagraph 3.18 to indemnify or hold harmless Architect or any agent, servant of employee of Architect from liability or damage that is caused by or results from:

- .1 defects in plans, designs or specifications prepared, approved or used by the Architect; or
- .2 negligence of the Architect in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs or specifications that are a part of the Contract Documents; and arises from:
  - .1 personal injury or death;
  - .2 property injury; or
  - .3 any other expense that arises from personal injury, death or property injury.

Add Section **3.18.3** as follows:

**3.18.3** It is agreed with respect to any legal limitations, now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

Add Sections **3.19**, **3.20**, and **3.21** as follows:

### **3.19 RECORD DRAWINGS**

**3.19.1** Refer Owner's Closeout Procedures

### **3.20 PREVAILING WAGE RATES**

**3.20.1** As required by Chapter 2258 of the Texas Government Code Title 10 Prevailing Wage Rate, no employee used in this construction may be paid less than the minimum prevailing wage rate in effect for the Owner.

**3.20.2** The Contractor and each Subcontractor and Sub-subcontractor shall pay to all laborers, workmen, and mechanics employed in execution of this Contract not less than rates set forth by law for each craft of type of workman or mechanic needed to execute this Contract.

**3.20.3** Determination of prevailing wages shall not be construed to prohibit payment of more than the rates identified.

### **3.21 ANTITRUST VIOLATIONS**

**3.21.1** Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1 et.seq. (1973). The Contractor shall include this provision in his contracts with each Subcontractor and Supplier. Each Subcontractor shall include such provision in contracts with Sub-subcontractors and suppliers.

### **3.22 THIRD-PARTY BENEFICIARY**

**3.22.1** No person or entity shall be deemed to be a third-party beneficiary of any provision(s) of this Contract; nor shall any provision(s) hereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

## **ARTICLE 4 – ARCHITECT**

### **4.2 Administration of the Contract**

Delete Section **4.2.2** in its entirety and substitute the following:

**4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner

against defects and deficiencies in the work, and (3) to determine in general if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract documents. The Architect will be required to make on-site inspections as necessary to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

Delete Section **4.2.6** in its entirety and substitute the following:

**4.2.6** The Architect shall have authority to reject Work that does not conform to the Contract Documents. The Architect shall be required to promptly notify the Owner of any non-conforming Work and shall reject such non-conforming Work unless the Owner objects to the rejection in writing within twenty-four (24) hours of such notification. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract documents, the Architect will have authority to require 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. Performance of any additional inspection or testing, which would result in additional cost to the Owner, shall require advance notice to and approval of the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work, except when the Contractor's inability to perform the Work is a result of design flaw, error or omission.

Add the following Section **4.2.8.1**:

**4.2.8.1** Allowance Expenditure will be authorized using Allowance Expenditure authorizations (AEA) executed by the Owner, the Architect and the Contractor. All Allowance Expenditure Authorizations will be incorporated into the contract by Change Order at the completion of the project. Work authorized by an AEA may be invoiced as it is completed.

Delete Section **4.2.13** in its entirety and substitute the following:

**4.2.13** All decisions on matters relating to aesthetic effect shall initially be made by the Architect; however, all such decisions are subject to the Owner's written approval.

## **ARTICLE 5 – SUBCONTRACTORS**

### **5.1 DEFINITIONS**

At the end of Section **5.1.1** add the following sentence:

Wherever relevant, the term "Subcontractor" shall also include a person, or entity who supplies material or equipment for the Project.

At the end of Section **5.2.4**, add the following sentence:

Prior to such change the Contractor shall notify the Architect of his intent and reasons for such proposed changes.

### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Delete the last sentence of Section **5.4.1** in its entirety and substitute the following:

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, but only to the extent permitted by law.

Delete the last sentence of Section **5.4.3** in its entirety.

## **ARTICLE 7 -- CHANGES IN THE WORK**

## **7.1 GENERAL**

Delete the text of Section 7.1.2 in its entirety and substitute the following:

**7.1.2** A Change Order shall be based on agreement among the Owner, Contractor, and Architect, except when the Contract balance is amended as a result of Owner's Right to Carry out the Work under Section 2.4.1 or the Owner's assessment of liquidated damages as allowed by the Contract Documents. A Construction Change Directive requires agreement by the Owner or the Owner's representative and Architect, and may or may not be agreed to by the Contractor; an order for a minor change may be issued by the Architect alone.

Add Section 7.5 as follows:

### **7.5 ALLOWABLE MARKUPS FOR CHANGES IN THE WORK**

**7.5.1** Unless otherwise directed, the procedure and markup of the costs for additional work shall be determined in the following manner:

- .1 Upon Change Proposal request, the Contractor shall quote the cost for changes in the work showing separately, credits and additional costs broken down by headings used in the Schedule of Values. Further breakdown into units of labor and materials may be required if agreement on cost cannot be reached using the breakdown by headings. The final cost shall be the amount of the Total Contract Value Change shown on the Change Proposal signed by the Contractor and Owner. For general construction work, not subcontracted, the Contractor shall consider as costs the actual invoice amount for additional materials, the sales tax on additional materials when applicable, the wages paid for additional direct labor, plus the Contractor's usual markup of wages to cover additional labor related costs such as insurance, taxes and fringe benefits.
- .2 On changes executed within the Owner's Contingency Allowance, Contractor shall have included costs for combined overhead and profit, to the extent permitted by the Contract Documents, and General Conditions costs, including the cost of superintendents, field office expense, temporary facilities and services, small hand tools, construction equipment not specifically provided for the change in hand, home office expense, bond and building insurance premiums, and managing the Subcontractor's work, in his Base Contract amount. Allowed overhead and profit fee on Owner's Contingency Allowance changes to be included in the total cost to the Owner shall be based as follows:
  - .1 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
  - .2 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractors.

**7.5.2** If any additional Work is authorized outside of or in excess of the Owner's Contingency Allowance, the combined overhead and profit for this work shall be based as follows:

- .1 For the Contractor, for Work performed by the Contractor's own forces, a maximum total markup of ten percent (10%) of the actual cost on a lump sum project, or the Contractor's Construction Phase Fee on a Guaranteed Maximum Price Project.
- .2 For Work performed by the Contractor's Subcontractor(s), five percent (5%) of the amount due the Subcontractor(s).
- .3 For each Subcontractor or Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, a maximum markup of ten percent (10%) of the actual cost.
- .4 For each Subcontractor, for work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.

**7.5.3** In order to facilitate checking of quotations for extras or credits, all proposals, (except those so minor that their propriety can be seen by inspection), shall be accompanied by a complete and detailed itemization of costs including labor, materials, and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change be approved without such itemization.

**7.5.4** Change orders, as they are accepted by the Owner, shall be entered under heading "Change Orders" in the next current Request for Payment.

**7.5.5** All credits to or deductions from the Contract Sum, a Contingency or an Allowance shall be calculated using the same methodology set forth in this Section 7.5. All unused Contingency or Allowance amounts shall be credited back to Owner prior to final payment, along with any markups included in the Contract Sum or GMP on such unused amounts.

## **ARTICLE 8 -- TIME**

### **8.1 DEFINITIONS**

At Section **8.1.4**, add the following sentence:

See further definition of "Day" in Section **1.9.10**.

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

Delete Section **8.3.1** in its entirety and substitute the following:

**8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other unforeseeable causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. **No extensions of the Contract Time will be granted for inclement weather, except for Force Majeure weather events consisting of named storms or government declared emergencies resulting from extreme weather.**

Add Sections **8.3.4** and **8.3.5** as follows:

**8.3.4** The parties hereto agree that time is of the essence of this Contract and that pecuniary damages would be suffered by the Owner if the Contractor does not substantially complete all Work called for in the Contract Document by the specified date, which damages are, by 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 One Thousand Dollars (\$1,000), per phase for each and every Calendar Day beyond the agreed date which the contractor has agreed to for Substantial Completion of the Work included in the Contract Documents. It is expressly understood that 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 substantially completed within the agreed time, or with 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 or forfeiture; said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. The liquidated damages assessed herein shall be Owner's sole remedy for time delays between the deadline for substantial completion and Contractor's achievement of substantial completion.

**8.3.5** Failure to complete and close-out the Project, and complete all Punch List items, within sixty (60) days after the scheduled Substantial completion date will additionally entitle the Owner to deduct from the final payment made to the Contractor a sum equal to One Thousand Dollars (\$1,000) per phase, for each and every Calendar Day beyond the 60-day close-out period. It is expressly understood that 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 Project close-out does not occur on a timely basis. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty or forfeiture; said damage being

caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. If the Contractor is delayed through no fault of the Owner, the Substantial Completion is not achieved by the agreed contract completion date, the Project close-out period of sixty (60) days will not be extended by the number of days of delay past the actual Substantial completion date and will remain based upon the agreed contract completion date.

## **ARTICLE 9 -- PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM**

Add Section **9.1.1.1** as follows:

**9.1.1.1** The Owner is exempt from payment of Texas State Sales Tax on materials required for the Work. Therefore, to comply with the law, the Contract Sum shall be broken down into the amount of cost for labor and the amount of cost for materials. This breakdown shall be provided by the Contractor within ten (10) days of award of Contract.

### **9.2 SCHEDULE OF VALUES**

Add the following Sections:

**9.2.1** General Contractor's cost for Contractor's fee, bonds and insurance, General Conditions, etc., shall be listed as individual line items.

**9.2.2** Schedule of Values shall break each line into materials and labor. Once approved by the Owner and Architect, it shall be used as basis for reviewing Application for Payment but not be taken as evidence of market or other value.

**9.2.3** Contractor's cost for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

**9.2.4** On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule shall indicated line items and amounts in detail, (for example; underground, major equipment, fixtures, installation of fixtures, start up, etc.)

**9.2.5** Costs for subcontract work shall be listed without any addition of General Contractor's costs for overhead, profit or supervision.

**9.2.6** The Contractor shall include a value for the coordination documents/drawings on the schedule of values.

**9.2.7** The Contractor shall include a value for the correction of deficiencies noted by the Commissioning Agent and the Test, Adjust and Balance consultant on the schedule of values for each sub-contractor subject to commissioning and test, adjust and balance requirements.

### **9.3 APPLICATIONS FOR PAYMENT**

Delete Sections **9.3.1** and **9.3.2** in their entirety and replace them with the following:

**9.3.1** Refer to Section 7.1.3 of the A133 Agreement for timelines related to Applications for Payment.

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

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

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

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. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment, without prior written approval of Owner.

The Contractor acknowledges that the review of materials and/or equipment stored off the side is an additional service of the Architect, and the Contractor shall be charged for that service. The cost for such service will be established by the Architect and is not subject to appeal.

Add Section **9.3.4** as follows:

**9.3.4** The Contractor shall submit requests for payment in duplicate, using AIA Document G702, Application and Certificate of Payment, as the cover sheet. Continuation sheets showing in detail the amounts requested, etc., shall be submitted using AIA Document G703, Continuation Sheet, or a computerized version of these documents previously approved for use. The information provided on the continuation sheets in the Description of the Work and Scheduled Values columns shall match the corresponding information shown on the approved Schedule of Values. All blank spaces on AIA Document G702, Application and Certificate of Payment, must be completed and the signatures of the Contractor and Notary Public shall be original on each form. By submitting his application for payment, the Contractor certifies that the individual signing the application is authorized to do so.

## **9.6 PROGRESS PAYMENTS**

Delete Section **9.6.1** in its entirety and substitute the following:

**9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make progress payments in accordance with the following Section and Section 7.1.3 of the A133.

- .1 Based upon the applications for payment and supporting documents submitted to the Architect by the Contractor and certification of the amount payable by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period covered by the application for payment:
- .2 Applications for Payment shall be submitted by the last day of the month. Not later than the last day of the following month, ninety-five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing (subject to the conditions listed in Article 9.3.2 of the Supplementary Conditions to the Contract for Construction), for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner.
- .3 Upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety-five percent (95%) of the Contract Sum, less such amounts as the Architect shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

At Section **9.6.2**, insert the following sentence between the first and second sentence:

More specifically, if only five percent (5%) retainage is withheld by the Owner on payments to the Contractor, then the Contractor shall withhold only five percent (5%) retainage on payments to



subcontractors; and subcontractors shall withhold only five percent (5%) retainage on payments to sub-subcontractors.

## **9.7 FAILURE OF PAYMENT**

Delete the phrase "or awarded by binding dispute resolution." Replace all references to "seven days" to "ten days."

## **9.8 SUBSTANTIAL COMPLETION**

At Section **9.8.2**, add the following sentence at the end:

Should the Architect determine that the Contractor's List of Items to be Completed or Corrected lacks sufficient detail or requires extensive supplementation, the list will be returned to the Contractor for revision, and inspection for determining the Date of Substantial Completion will be delayed until the List submitted is a reasonable representation of the work to be done.

Add Sections **9.8.6** and **9.8.7** as follows:

**9.8.6** In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met:

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

The following items are a partial specific list of requirements, as applicable to the Project, that must be completed prior to established Substantial Completion of all portions of the work (Including the Substantial Completion of the commissioning phase).

1. All fire alarm system components must be completed and demonstrated to the Owner.
2. Local fire marshal approval certificate, or similar Certificate of Occupancy from the governing agency, must be delivered to the Owner.
3. All exterior clean-up and landscaping must be complete.
4. All final interior clean-up must be complete.
5. All HVAC air and water balancing must be complete.
6. All required commissioning must be complete.
7. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
8. All communications equipment, telephone system, and P.A. systems must be complete and demonstrated to the Owner.
9. All final lockset cores must be installed and all final Owner directed keying completed.
10. All room plaques and exterior signage must be completed.
11. All Owner demonstrations must be completed including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
12. A final certificate of occupancy must be signed by the Contractor and delivered to the Owner.

**9.8.7** After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of time within which to correct all deficiencies attached to the Certificate of Substantial Completion as outlined in Section 8.3.4 of these supplementary conditions. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain

incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.2.

- .1 Should corrective work following Substantial Completion require more than one reinspection after notification by the Contractor that corrections are complete, the cost of subsequent inspections may also be deducted from the Contract funds remaining unpaid to the Contractor.

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

At Section **9.10.2**, add the following sentence **at the end**:

Prior to final payment, the Contractor shall meet all of the requirements of Owner's Closeout Procedures.

Add Section **9.10.6** as follows:

**9.10.6** Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor thirty-one (31) days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed, all Contract Close Out Documents have been submitted, and the Final Certificate for Payment has been issued by the Architect. The final payment will not be made until all of these conditions have been satisfied.

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

Add Sections **10.2.9** and **10.2.10** as follows:

**10.2.9** The performance of the foregoing services by the Contractor shall not relieve the Subcontractors of their responsibilities for the safety of persons and property and for compliance with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to the conduct of the Work.

**10.2.10** The Contractor shall be responsible for taking all precautions necessary to protect the Work in place from any foreseeable weather conditions which could cause any potential damage to portions or all Work in place. The Contractor shall be responsible for performing all repairs and/or replacement of any Work that results from foreseeable weather conditions.

## **10.3 HAZARDOUS MATERIALS**

Delete the text of Section **10.3.1** in its entirety and substitute the following:

**10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor and Architect shall then proceed in the same manner described in Section 10.3.2.

Delete the text of Sections **10.3.3**, **10.3.4** and **10.3.5** in their entirety.

Delete the text of Section **10.3.6** in its entirety and substitute the following:

**10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a governmental 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 indemnify the Contractor for all costs and expenses thereby incurred, but only to the extent provided by law.

Add Section **10.3.7** as follows:

**10.3.7** As part of the construction contract close out process, and prior to receiving payment of any of the retainage, the Contractor and his subcontractors shall submit notarized statements pertaining to the above referenced hazardous materials.

## ARTICLE 11 -- INSURANCE AND BONDS

Delete the text of Sections 11.1 through 11.5 and substitute the following Sections:

### 11.1 CONTRACTOR'S LIABILITY INSURANCE

The Owner reserves the right to review the insurance requirements during the effective period of any Contract to make reasonable adjustments to insurance coverages and limits when deemed reasonably prudent by Owner based upon changes in statutory laws, court decisions or potential increase in expense to loss.

11.2 The Owner requires the following minimum insurance coverages:

<u>Types of Coverage</u>	<u>Limits of Liability</u>
Commercial General Liability	General Aggregate \$2,000,000.00
	Products/Completed Operations/Aggregate \$1,000,000.00
	Bodily Injury and Property Damage (each) \$1,000,000.00
	Contractual \$1,000,000.00
	Personal and Advertising Injury \$1,000,000.00
	Fire Damage \$500,000.00
	Medical Expense \$5,000.00

11.2.1 The Owner shall be named as an additional insured on a primary and non-contributory basis using form CG 2010 10 01 or similar endorsement providing equal or greater coverage in favor of the Owner.

Coverage shall include the following:

- (a) Premises operations;
- (b) Blanket Contractual Liability;
- (c) Pollution;
- (d) Products/Completed Operations;
- (e) Broad Form Property Damage;
- (f) Independent Contractors;
- (g) Per project aggregate limit;
- (h) Provide a statement of claims against the aggregate limit with each renewal certificate;
- (i) X,C,U exclusions to be removed when underground work is performed; and
- (j) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

11.2.2 Automobile Liability Combined Single Limit \$1,000,000.00

- (a) Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of Contractor.
- (b) Owner and its officers, directors, representatives, agents and employees shall be endorsed as Additional Insureds, as their interests may appear.
- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

11.2.3 Workers' Compensation Statutory Limits

- (a) Coverage at Statutory Limits with All States Endorsement

(b) Employer's Liability	Each Accident	\$1,000,000.00
	Disease (Policy Limit)	\$1,000,000.00
	Disease (Each Employee)	\$1,000,000.00

(c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**11.2.4 Excess or Umbrella Insurance (provides coverage in excess of primary Commercial General Liability, Automobile Liability, and Worker's Compensation Coverage B limits)**

(a) Minimum coverage for the Contractor shall be one (1) times the Contract amount, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$25,000,000.00. Limits for primary policies may differ from those shown above when Excess (Umbrella) Insurance coverage is provided.

(b) Owner and its officers, directors, representatives, agents and employees shall be endorsed as Additional Insureds, as their interests may appear.

(c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**11.2.5 Builder's Risk**

Unless otherwise directed by Owner, Contractor shall purchase and maintain property insurance written on its "builder's risk 'all risk'" or equivalent policy form 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 until such time as provided for in Section 11.3. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Such insurance, being on an "all-risk" or equivalent policy form 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, hail, tornado, storm, flood, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Such insurance shall cover portions of the Work stored off site and portions of the Work in transit.

**11.3 The Owner requires that the following insurance requirements be satisfied:**

- .1 No Work shall be commenced until all insurance requirements set forth in this Agreement have been approved by the Owner in writing.
- .2 All insurance policies and certificates required hereunder shall be in form and content satisfactory to the Owner.
- .3 The Owner shall be furnished an ACORD form Certificate of Insurance evidencing all policies and endorsements required by this Agreement prior to execution of the Contract and thereafter upon renewal or replacement of each required policy of insurance.
- .4 Each Insurance coverage/policy shall contain a provision that at least thirty (30) days prior written notice shall be given to the Owner in the event of cancellation, material change, or non-renewal.
- .5 Insurance shall be underwritten by a company licensed to do business in Texas, satisfactory to Owner and rated minimum A-VII by A.M. Best.

- .6 The insurance coverages specified herein shall be maintained at all times during the term of the contract and, with the exception of builder's risk coverage, shall be maintained for a minimum of one (1) year thereafter.
- .7 No deletions/exclusions from the standard coverage form are allowed without the prior written consent of the Owner.
- .8 All insurance must be issued on an occurrence basis.
- .9 The Contractor shall be responsible for all deductibles; the Owner shall approve the deductibles selected.
- .10 With the exception of Excess Umbrella Coverage, the coverage afforded by each carrier must be a primary over any other applicable insurance.
- .11 In addition to certificates of insurance, copies of policy endorsements must be provided (a) listing the Owner as Additional Insured, and (b) showing waivers of subrogation in favor of the Owner.

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

Add the following Sections:

**11.4.1** The Contractor shall provide a Performance Bond, in the penal sum equal to one hundred percent (100%) of the Contract Sum, if the formal Contract is in excess of One Hundred Thousand Dollars (\$100,000.00) and a Labor and Material Payment bond, in the penal sum equal to one hundred percent (100%) of the Contract sum if the formal contract is in excess of Twenty Five Thousand Dollars (\$25,000.00).

**11.4.2** The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an attached authorized power of attorney. Such Bonds shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of a least A-X and included on the U.S. Department of the Treasury Listing of Approved Sureties (Dept. Circular 570).

**11.4.3** The Performance Bond Form and the Payment Bond Form included herein shall be executed and submitted to the Architect in duplicate prior to commencement of the work. The surety companies must be acceptable to the Owner and licensed admitted carriers in the State of Texas; and the companies must appear in a current Federal Treasury list as Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring companies.

**11.4.4** Each bond shall be of penal sum equal to one hundred percent (100%) of the Contract Sum and shall be compatible with the provisions of the governing authority. The Contractor shall file copies of each bond with the county clerk and furnish the Owner with a file receipt. The bonds shall remain in force throughout the warranty period of the contract. The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an authorized power of attorney attached.

**11.4.5** Claims must be sent to the Contractor and his Surety in accordance with Article 5160, Revised Civil Statutes. The Owner will furnish in accordance with such Article, a copy of the Payment Bond as provided therein to claimants upon request. All claimants are cautioned that no lien exists on the funds unpaid to the contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his Surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no responsibility because of any representation by any agent or employee.

#### **11.5 WORKER'S COMPENSATION INSURANCE COVERAGE**

**11.5.1** Comply with the requirements of Rule 28, TAC §110.110, Reporting Requirements for Building or Construction Projects for Governmental Entities

#### **11.5.2 DEFINITIONS:**

- .1 Certificate of coverage (“certificate”). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing service as on a project, for the duration of the project.
- .2 Duration of the project –includes the time from the beginning of the work on the project until the contractor’s/person’s work on the project has been completed and accepted by the governmental entity.
- .3 Persons providing services on the project (“subcontractor” in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity which furnishes persons to provide services on the project. “Services” include without limitation, providing hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply delivery, and delivery of portable toilets.

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

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

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

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

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

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

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

**11.5.9** The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker’s Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack coverage.

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

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

- .2 Provide the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
- .3 Provide the Contractor, prior to the end of the coverage period shown on the current certificate ends during the duration of the project.
- .4 Obtain from each other person with whom it contracts, and provides to the Contractor:
  - .1 A certificate of coverage, prior to the other person beginning work on the project, and
  - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- .5 Retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
- .6 Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project, and
- .7 Contractually require each person with whom it contracts, to perform as required by these subsections (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

**11.5.11** 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 actions.

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

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

### **12.2.1 BEFORE SUBSTANTIAL COMPLETION**

After Section **12.2.1** add the following Sections:

12.2.1.1 In the event of failure of a specified project, either during construction or the correction period, the Contractor shall take appropriate measures with the manufacturer of the product to assure correction or replacement of the defective products.

12.2.1.2 Refer to Closeout Procedures in the specifications for further terms regarding warranties which will be required prior to final payment.

### **12.2.2 AFTER SUBSTANTIAL COMPLETION**

After Section **12.2.2** add the following Section:

12.2.2.1 Approximately eleven months after substantial completion, the contractor shall accompany the Owner and Architect on an "end of the one year correction period" reinspection of the Project. Additional deficiencies observed or reported shall be corrected by the Contractor.

### **12.3 ACCEPTANCE OF NONCONFORMING WORK**

Number the existing provision as Section **12.3.1**, and add Section **12.3.2** as follows:

**12.3.2** The Owner's use and/or occupancy of any or all of the Project site shall never be construed as an acceptance of Work not in conformance with Contract Documents. The Owner reserves the right to enforce provisions of the Contract unless the Owner's acceptance is provided to the Contractor in writing.

## **ARTICLE 13—MISCELLANEOUS PROVISIONS**

Add Sections **13.7**, **13.8** and **13.9** as follows:

### **13.7 EQUAL OPPORTUNITY**

**13.7.1** The contractor shall maintain policies of employment as follows:

- .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. The Contractor shall take affirmative action to insure 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, upgrading, demotion transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

### **13.8 CRIMINAL BACKGROUND CHECKS**

The Contractor/Subcontractor shall certify the Criminal Background Check, as stated in Owner's Board Policy CJA and the form included herein, as required by Texas Education Code Section 22.0834 and Texas Administrative Code Section 153.1101 and 153.1117, and shall comply with all requirements of such laws and policy.

### **13.9 REQUIRED CERTIFICATIONS**

Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Contractor hereby certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

## **ARTICLE 14—TERMINATION OR SUSPENSION OF THE CONTRACT**

Delete the text of Section 14.1.3 in its entirety and substitute the following:

**14.1.3** If one of the reasons described in Section 14.4.1 or 14.4.2 exists, the Contractor may, upon seven day's written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed as of the date of the notice, plus costs of demobilization.

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

Delete the text of Section **14.4.3** in its entirety and substitute the following:

**14.4.3** In the case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed up to date of receipt of the notice of termination, plus costs of demobilization.



## **ARTICLE 15—CLAIMS AND DISPUTES**

### **15.1 CLAIMS**

Delete the text of Section **15.1.1** in its entirety and substitute the following:

#### **15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner, Architect, and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Nothing herein shall require the Owner to make or file a Claim in order to assess liquidated damages provided for in the Contract Documents.

#### **15.1.2 TIME LIMITS ON CLAIMS**

Delete the last sentence of Section **15.1.2** in its entirety.

#### **15.1.3 NOTICE OF CLAIMS**

Delete the second sentence of Section **15.1.3** in its entirety and substitute the following:

Claims by either party must be initiated within ninety (90) days after occurrence of the event giving rise to such Claim or within ninety (90) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### **15.1.6 CLAIMS FOR ADDITIONAL TIME**

Delete the text of **Section 15.1.6.2** in its entirety and substitute the following:

**15.1.6.2 No extensions of the Contract Time will be granted for inclement weather, except as provided in Section 8.3.1.**

#### **15.1.7 CLAIMS FOR CONSEQUENTIAL DAMAGES**

Delete the text of Section **15.1.7** in its entirety.

### **15.2 INITIAL DECISION**

Delete the text of Section **15.2.1** in its entirety and substitute the following:

**15.2.1** Claims, excluding those alleging an error or omission by the Architect or those arising after expiration of the period for correction of the Work, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. If the parties are unable to agree, any claim, dispute or matters arising out of the contract between the Architect, Owner and Contractor or any combination of those parties shall be submitted to a court of appropriate jurisdiction.

Delete the text of Section **15.2.5** in its entirety and substitute the following:

**15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefore; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties, but subject to mediation, if both parties so agree, and subject to legal or equitable proceedings in a court having jurisdiction thereof. It is understood and agreed that, in the event that any dispute, controversy, or conflict arises during the design and construction

of the Project or following its completion, the parties hereto will cooperate in good faith, if possible, to resolve the issues without resorting to litigation.

Delete the text of Sections **15.2.6** and **15.2.6.1** in their entirety.

Add the following Section **15.2.9**

**15.2.9** The prevailing party in any judicial proceeding arising from the Contract Documents shall recover its reasonable and necessary attorneys' fees.

### **15.3 MEDIATION**

**15.3.1** Delete the text of **15.3.1** in its entirety.

Delete Section **15.3.2** in its entirety and replace with the following:

**15.3.2** The parties may mutually agree to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing unless stayed for a longer period of agreement of the parties or court order.

### **15.4 ARBITRATION**

Delete the text of Sections **15.4.1** through **15.4.3** and **15.4.4.1** through **15.4.4.3** in their entirety.

**END OF DOCUMENT**