



**TOMBALL INDEPENDENT SCHOOL DISTRICT
PROPOSAL #947-23 – TOMBALL WEST HIGH SCHOOL
ISSUED: OCTOBER 30, 2023
REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR
THE A NEW 3,000 STUDENT HIGH SCHOOL CAMPUS**

Pursuant to the provisions of the Texas Government Code Chapter 2269, Subchapter D, as amended, the Tomball Independent School District is seeking submissions from qualified Contractors to provide Construction Services for the project identified in this RFP.

Refer to Section II and III for critical dates and time requirements necessary to propose on this project. There is a non-mandatory pre-proposal meeting.

Any Proposal received after such time will not be considered and will be returned unopened. Unsigned Proposals and/or Proposals received via Facsimile or Email will not be considered. Part 1 will be held unopened, and the names of Respondents withheld by the Owner, until the receipt of Part 2 responses. When Part 1 and Part 2 are received, pursuant to the provisions of the Texas Government Code §2269.151, the Owner's staff will publicly open and read aloud the names of the respondents and monetary offer stated in the Proposals Part 1 and the Alternates stated in Part 2. Within (24) hours a short list of at least of the top proposers will be created and those selected will be invited for a team interview. Refer to the Schedule of events for the projected date and time window. All proposers are required to be available with their team for this interview if selected and shall keep this date open until notified. Based on all criteria submitted and the final interview results, the district will recommend a proposer to the BOT for approval.

Within forty-five (45) days following the date of the opening, the proposals will be evaluated and ranked in relation to the selection criteria set forth herein. Award will be made utilizing the Evaluation Criteria as required by Texas Education Code §2269.154 and as stated herein. Respondents must provide all requested information; failure to comply with any portion of the solicitation will be reflected in the evaluation process.

This RFP and all documents in total can be downloaded from the Tomball ISD Purchasing website, <https://www.tomballisd.net/about-tisd/departments/finance/purchasing/bids-and-proposals>. If you have trouble with the link, go to the Tomball ISD website and at the "Find" bar type bids. This will take you directly to the procurement page. Contact the Program Manager if you encounter a problem.

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I. INTRODUCTION

Pursuant to the provisions of the Texas Government Code § 2269, Subchapter D, it is the intent of the Tomball Independent School District (hereinafter known as Owner) to solicit proposals from qualified vendors to provide Construction services in the process as described herein.

Project Team: The selected Respondent will join a Project Team which will include Owner Administration, Program Manager and Architect/Engineer, all of whom will be engaged in a cooperative effort to provide the Owner with successful and cost-effective solutions for the described project.

Project Information: The Owner plans to build a new two-story High School, with an *approximate* total area of 531,000 sf for *approximately* 3,000 students. This school is considered a greenfield site as nothing existed there prior to this time. The District has by other contracts constructed or will have constructed the storm detention for the entire site, brought gas and water to the artificial lot line of the project and coordinated with the local power company for the site service available for your connection at their pole locations. Connection for power to this project shall be made via underground service which is the responsibility of this project.

The Project may include the following general scope items:

1. Site utilities, cement concrete paving, drainage ditches, underground utility services, removal and fill, coordination with existing storm system and its construction by others and related site improvements.
2. Foundation, footings, piers, select fill placement and compaction.
3. Structural frame and masonry bearing walls.
4. Metal fabrications
5. Face brick, cast stone, & similar types of veneer
6. Metal wall panels
7. Aluminum, glass and window wall
8. Roofing as specified.
9. Interior walls with built and applied finishes
10. Tile, resilient flooring, sheet carpeting, resinous athletic flooring
11. Suspended plaster, suspended drywall, lay-in panels, sound absorbing units.
12. Steel doors and frames, wood doors, Kynar coated storefront, overhead coiling doors.
13. Casework & millwork
14. Specialties
15. Food Service
16. Hydraulic elevators
17. Automatic sprinkler system
18. Plumbing systems
19. HVAC Systems and building automation.
20. Electrical, telecommunications systems, telephone systems, data cabling and infrastructure, lightning protection and emergency power
21. Fire detection, alarm and emergency call systems

The substantial completion date is stated in the proposal form but no later than May 30, 2026
The Owner's estimated cost of construction \$198,000,000.00.

ARCHITECT:

22. Huckabee Architects
1700 City Plaza Dr., Suite 125
Spring, Texas 77389
Caitlin Munch, AIA – Architect
915.588.9548

PROGRAM MANAGER: (Owner's Representative)

23. Lockwood, Andrews & Newnam, Inc.
(Local Office) 1110 Baker Dr.
Tomball, Texas 77375
Robert Wilbanks, AIA – Program Manager
832.570.7078

II. RFP ADVERTISEMENT, AVAILABILITY, AND DELIVERY

Responses are due as noted in Section III – Probable Schedule of Events.

All responses must be submitted in a sealed envelope/package, delivered to the listed address and labeled as noted below. The label shall be clearly printed on the face of the package as noted below and read:

(Label)

**Attention: Mr. Jim Ross, CFO
Tomball ISD Annex Building
Re: Tomball West High School
1110 Baker Dr
Tomball, TX 77375**

All questions shall be addressed as follows: Questions concerning this RFP shall be directed to the Owner's Program Manager, in writing, at the email address provided below. Questions concerning the Contract Documents shall be addressed to the Architect, in writing, at the email address below. Verbal questions and explanations are not permitted other than as described by this section, if any. All questions are due by the times listed in the Schedule of Events, Central Standard Time, (CST). Answers to questions will be issued in an Addendum and will be posted on Owner's Website. Refer to the link provided.

Robert Wilbanks, Program Manager		Caitlin Munch - Architect
1110 Baker Dr		1700 City Plaza Dr Suite 125,
Tomball, Texas, 77375		Spring, TX 77389
832.570.7078		(915) 588-9548
rwilbanks@lan-inc.com		caitlin.munch@huckabee-inc.com

CRITERIA FOR SELECTION:

Consistent with the Texas Government Code 2269.155, the selection criteria and weighting used for the selection process is listed below:

All Proposers- Maximum 100 Points

- | | |
|--|-----------|
| A. Proposed amount for base proposal, | 30 points |
| B. Evaluation survey of company references and project contacts, | 25 points |
| C. History of company performance, | 15 points |
| D. Similar company project experience and qualifications, | 10 points |
| E. Similar individual personnel project experience and qualifications, | 10 points |
| F. Safety EMR score, | 5 points |
| G. Financial stability, | 5 points |

All responses in your proposal may be used to rank Respondent based on those criteria. The Owner reserves the right to verify the accuracy and completeness of all responses by using any information available to the Owner without regard to whether such information appears in your proposal.

By submitting a Proposal, each Respondent agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective trustees, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the proposal documents; acceptance or rejection of any proposal; and award of a contract.

The Owner reserves the right, at its sole discretion, to request clarification or other information to evaluate any submission in order to make the award of the contract in the best interests of the Owner.

The Owner reserves the right to negotiate terms and conditions including scope, staffing levels, and fees, with the highest ranked responder. If an agreement cannot be reached with the highest ranked responder, the Owner will terminate negotiations in writing and reserves the right to negotiate with the next highest ranked responder and so on until an agreement is reached. When agreement is reached, the Owner will submit its recommendation to the School Board for approval and award of contract.

All official bid documents and addenda will be posted on the Owner's website for your access. It is your responsibility to check the website to verify availability of any new addenda or changes. Critical dates are all consolidated in section III PROBABLE SCHEDULE OF EVENTS.

III. PROBABLE SCHEDULE OF EVENTS

	<u>Date</u>	<u>Time</u>	<u>Event</u>
A.	October 27, 2023 November 3, 2023 November 1, 2023	N/A N/A N/A.	1st Advertisement Posted for this CSP. 2nd Advertisement Posted for this CSP. RFP Posted on TISD Website
B.	November 8, 2023	11:00 A.M.	Pre-Proposal Conference 1110 Baker Drive Tomball, Texas 77375 Site Visit may follow this conference
C.	November 14, 2023	2:00 P.M.	References submitted in Excel File provided with RFP Send to: Toni O'Bryan 281.620.1710 tmobryan@lan-inc.com
D.	December 8, 2023	2:00 P.M.	Deadline for questions
E.	December 13, 2023	12:00 P.M.	Final Addendum Posted
F.	December 19, 2023	1:30 P.M.	Part 1 Base Bid Attn: Mr. Jim Ross, Director of Projects, and Development 1110 Baker Drive Tomball, Texas 77375
G.	December 19, 2023	2:30 P.M.	Part 2 Alternates Due same location as Part 1
H.	December 19, 2023	2:40 P.M.	Public Opening of Bids Same location where bids were submitted
I.	December 21, 2023	TBD	Interview of Short-Listed Firms Time TBD. Possible time frame between 10 am and 3 pm CST
J.	December 21, 2023	N/A	Final Evaluations Complete – Recommendation to the BOT is written.
K.	January 9, 2024	5:30 P.M.	Regular BOT meeting – Presented for Approval
M.	January 11, 2024	12:00 P.M.	Final Contract Agreement and General Conditions sent to Successful Bidder for Execution.
N.	January 15, 2024	12:00 P.M.	Anticipated Notice to Proceed. P.O. to be issued upon receipt of bonds and insurance.
O.	May 30, 2026	12:00 A.M.	Substantial Completion Deadline

****Note-all times are Central Standard Time**

Any Proposal received after such time will not be considered and will be returned unopened.
Unsigned Proposals and/or Proposals received via Facsimile or Email will not be considered.

Part 1 will be held unopened, and the names of Respondents withheld by the Owner until the receipt of Part 2 responses. When Part 1 and Part 2 are received, pursuant to the provisions of the Texas Government Code §2269.151, the Owner's staff will publicly open and read aloud the names of the respondents and monetary offer stated in the Proposals Part 1 and the Alternates stated in Part 2. Within Forty-five (45) days following the date of the opening, the proposals will be evaluated and ranked in relation to the selection criteria set forth herein. Award will be made utilizing the Evaluation Criteria as required by Texas Government Code §2269.154 and as stated herein. Respondents must provide all requested information; and failure to comply with any portion of the solicitation will be reflected in the evaluation process. Proposals that have been opened may not be changed for the purpose of correcting an error in the price. Other than price, a proposer may have the right to change any other error or mistake in the proposal as may be permitted by applicable law and subject to the approval of the Owner, unless such change would be in contravention of statutory or common law requirements or unless such change would give an unfair advantage to the proposer making such change.

IV. SUBMISSION FORMAT & CONTENT REQUIREMENTS

The contents of the Respondent Proposal must be complete in description, concise in volume, and austere in form.

The Proposal should be in the format of a written report and should be prepared on 8-1/2" x 11" sheets (single-sided) unless noted below and bound with coil or three ring binding.

1. Part 1
 - a) One (1) original containing an executed version of the following.
 - (1) 0 TAB A - Letter of Interest
 - (2) 0 TAB B - Executive Summary
 - (3) 0 TAB C - Submission Questionnaire
 - (4) VII.8.a) Provide bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years.
 - b) Provide a loss analysis from the bidder's insurance carrier.
 - c) Provide a loss history covering all lines of insurance coverage carried by the bidder.
 - (1) TAB E - Personnel
 - (2) 0 TAB F - Additional Information
 - (3) 0 TAB I - Optional Information
 - (4) 0 TAB G - EMR
2. Furnish companies EMR ratings for the past five (5) years.
 - (1) TAB H - Financial Information (May be submitted in separate sealed envelope if preferred. Only a single original is required for this.)
 - (2) EXHIBIT A -PROPOSAL FORM

- (3) TAB K INCLUDES Sections XV - **XXXI**
- (4) EXHIBIT B – BID BOND
- (5) EXHIBIT C - FELONY CONVICTION NOTIFICATION
- (6) EXHIBIT D - ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT
- (7) EXHIBIT E – PROOF OF INSURABILITY
- (8) EXHIBIT F – PROOF OF BONDING CAPACITY
- (9) EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE
- (10) EXHIBIT H - DEVIATION AND EXCEPTIONS FORM
- (11) EXHIBIT I – CERTIFICATE OF RESIDENCY
- (12) EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION
- (13) EXHIBIT K – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER
- (14) EXHIBIT L – FORM 1295-CERTIFICATE OF INTERESTED PARTIES
- (15) EXHIBIT M – CERTIFICATION REGARDING TERRORIST ORGANIZATIONS AND BOYCOTT OF ISRAEL
- (16) EXHIBIT N – CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES
- (17) EXHIBIT O – CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES
- (18) EXHIBIT P – CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE

b) Three (3) copies of above EXCEPT that EXHIBIT A –PROPOSAL FORM and Part 2 documents are not required to be included.

c) One (1) flash drive containing:

- (1) PDF of items stated in section IV.1.a) EXCEPT that EXHIBIT A –PROPOSAL FORM and Part 2 documents are not required to be included.
- (2) Completed Microsoft Excel File in response to part VII.4 and VII.5

3. Part 2

a) One (1) original containing an executed version of the following.

- (1) TAB L – INCLUDES SECTION XXXII - XXXIII
- (2) EXHIBIT R – BID ALTERNATES AND UNIT PRICE FORM

(3) EXHIBIT S – KEY SUBCONTRACTORS (See form for requirements.)

It is not required to re-state each question in the response. However, provide section numbers, and outline level description of the response item since the evaluation criteria will rely on certain sections of the response.

Respondents may provide supplemental materials further describing their capabilities and experience.

Owner is a governmental body subject to the Texas Public Information Act. Proposals submitted to Owner as a result of this procurement solicitation may be subject to release as public information after contracts are executed or the procurement is terminated. If a Respondent believes that its Proposal, or parts thereof, may be exempted from disclosure under Texas law, the Respondent must specify page-by-page and line-by-line the parts of the Proposal which it believes are exempt. In addition, the Respondent must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims of confidentiality will not be accepted. Owner assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Respondents.

4. The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of Respondent's information.

5. Any respondent wishing to maintain confidentiality of financial information must include a written request for same with the submission of the proposal.

V. DEFINITIONS

Respondent: The prime General Contractor company to join the Architect, Owner representatives and Program Manager to ensure optimal Cost Control, Scheduling, Phasing of Packages and Construction of Owner facilities.

Company: The prime General Contractor to join the Architect, Owner representatives and Program Manager to ensure optimal Cost Control, Scheduling, Phasing of Packages and Construction of Owner facilities.

Program Manager: The entity contracted by the Owner to provide overall fiduciary responsibilities and direct oversight of the contractor and A/E Team to ensure performance of actions contributing to the success of the owner's objective.

RFP: Request for Proposals

Owner: Tomball Independent School District

VI. TERM OF CONTRACT

The contract awarded in response to this RFP will be for General Contracting Services for RFP# 947-23 TWC-High School. The Owner has defined project completion dates for the anticipated work.

VII. SUBMISSION REQUIREMENTS

TAB A - Letter of Interest

TAB B - Executive Summary

Each respondent must include an executive summary briefly highlighting the respondent's qualifications and shall include how the respondent is most qualified to meet the evaluation criteria.

TAB C - Submission Questionnaire

Please provide the following information in the sequence and format prescribed by this questionnaire. Supplemental materials providing additional information may be provided in a separate format, but the information requested below is to be provided in this format. Failure to provide clear, transparent, non-elusive answers will be deemed non-responsive and scored accordingly.

1. Firm Information

- a) Name of Firm
- b) Address of Principal Office
- c) Phone and Fax Number
- d) Primary Individual (Point of Contact) for this RFP; name and email

2. Firm Organization

- a) Form of Business Organization (corporation, partnership, individual, joint venture, other?)
- b) How many years has your organization been in business in its current capacity?
- c) How many years has your organization been in business under its present name? Under what other or former names has your organization operated?
- d) If your organization is a corporation, answer the following: Date of incorporation, State of incorporation, President's name, Vice-President's name(s), Secretary's name, and Treasurer's name.
- e) If your organization is a partnership, answer the following: Date of organization, Type of partnership (if applicable), and Name(s) of general partner(s).
- f) If your organization is individually owned, answer the following: Date of organization, Name of owner.
- g) If the form of your organization is other than those listed above, describe it and name the principals.

TAB D - Respondent Project Experience

3. Construction value

- a) What is the construction dollar value, year by year, of all work under contract in all locations by your company for the period of 2017-2022?

- b) What is the construction dollar value, year by year, of all work under contract in Texas by your company for the period of 2017-2022?
- c) What is the construction dollar value, year by year, of all work under contract in Harris and all Contiguous Counties by your company for the period of 2017-2022?
- d) What percentage of your company's total construction dollar value, year by year, does all work under contract in Harris and all Contiguous Counties by your company for the period of 2017-2022 represent?
- e) What percentage of all work under contract in Harris and all Contiguous Counties by your company for the period of 2017-2022 has been K-12 school construction?
- f) What is the full time equivalent (FTE) employee count in all Texas locations by your company for the period of 2017-2022?
- g) What is the largest single executed contract value, year by year, by your company for the period of 2017-2022?

Section	2017	2018	2019	2020	2021	2022
VII.3.a)						
VII.3.b)						
VII.3.c)						
VII.3.d)						
VII.3.e)						
VII.3.f)						
VII.3.g)						

4. Completed Work (through substantial completion) within the last thirty-six months: List K-12 school projects constructed by your organization in Texas. The Respondent is obligated to provide accurate contact information for contacting the persons named below during a survey process that will be used during the evaluation scoring. **An oversized (11x17) table format concisely depicting all projects is required to be folded and inserted in the binder.** Respondents must use the Microsoft Excel file available with this RFP. For each project, provide:

- a) The Owner Entity
- b) Name of the Project

- c) State if the project was new construction, renovation, addition or combination.
- d) Type of construction contract (A101, A133, Owner Unique, etc.)
- e) Nature of the project/function of the building (Eg. New High School with Career Tech programs, athletic complex and natatorium)
- f) Size (SF)
- g) Construction delivery method (CMAR, CSP, Hard Bid, Etc.)
- h) Original contract (or GMP) cost
- i) Final contract (or GMP) cost
- j) Number of Change Orders (if any), either cost or time, (not change proposals, contingency expenditures or similar) with brief 150-word explanation, if desired
- k) Bid date/Final GMP
- l) Contractual original completion date
- m) Actual completion date
- n) Number of claims filed by contractor with brief explanation.
- o) Number of RFI's
- p) Name of major subcontractors
- q) Owner (Primary contact) contact information (If LAN was the Program Manager, do not list LAN as the Owner's Primary Contact):
 - (1) Name,
 - (2) title,
 - (3) email address,
 - (4) phone number
- r) Architect contact information:
 - (1) Company name
 - (2) Name,
 - (3) title,
 - (4) email address,
 - (5) phone number

5. Current Work: List up to five (5) projects of similar size and scope currently under construction by your organization. List the projects in order of priority, with the most relevant project listed first. The Respondent is obligated to provide accurate contact information for contacting the persons named below during a survey process that will be used during the evaluation scoring. An oversized (11x17) table format concisely depicting all projects is required. Respondents must use the Microsoft Excel file available with this RFP. For each project, provide:

- a) The Owner Entity
- b) Name of the Project

- c) State if the project is new construction, renovation, addition or combination.
- d) Type of construction contract (A101, A133, Owner Unique, etc.)
- e) Nature of the project/function of the building (Eg. New High School with Career Tech programs, athletic complex and natatorium)
- f) Size (SF)
- g) Construction delivery method (CMAR, CSP, Hard Bid, Etc.)
- h) Original contract (or GMP) cost
- i) Current contract (or GMP) cost
- j) Number of Change Orders (if any) through current period, either cost or time, (not change proposals, contingency expenditures or similar) with brief 150-word explanation, if desired
- k) Bid date/Final GMP
- l) Contractual completion date
- m) Number of claims filed by contractor with brief explanation.
- n) Number of RFI's (To date)
- o) Name of major subcontractors
- p) Owner (Primary contact) contact information (If LAN was the Program Manager, do not list LAN as the Owner's Primary Contact):

- (1) Name,
- (2) title,
- (3) email address,
- (4) phone number

- q) Architect contact information:

- (1) Company name
- (2) Name,
- (3) title,
- (4) email address,
- (5) phone number

6. Contracting and Subcontracting:

- a) List the categories of work that your organization normally performs with its own forces. Would you propose to do any work with your own forces?
- b) List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.

7. Claims, Suits and Failure to Perform: (If the answer to any of the questions below is yes, please provide details). Note: Do not fail to respond to this question or

furnish vague responses. Point totals available under this category of evaluation will be affected if you choose not to fully respond.

- a) Has your organization ever failed to complete any work awarded?
- b) Are there any judgments, claims, arbitration proceedings or suits, pending or outstanding against your organization or its officers?
- c) Has your organization filed or been involved in any lawsuits or requested arbitration regarding construction contracts within the last sixty months?
- d) Within the last sixty months, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

8. Safety

- a) Provide bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years.
- b) Provide a loss analysis from the bidder's insurance carrier.
- c) Provide a loss history covering all lines of insurance coverage carried by the bidder.

TAB E - Personnel

- 9. Provide an organizational chart outlining all personnel that will be assigned to the project and their responsibilities.
- 10. Given the scope and schedule of the project, identify the personnel proposed, specifically the Project Manager, Job Superintendent or Superintendent(s), and Field Operations personnel proposed to work on the project. Prior to contracting, the Owner may interview the Project Manager/Job Superintendent that will be assigned to the project. Please reference these personnel to projects listed in items VII.4 and VII.5 where possible.

- a) Provide a resume and references for each individual stating:
 - (1) Proposed role on this project
 - (2) Description of responsibilities for this proposed role (what will this person do?)
 - (3) Relevant past project experience list with role that makes this individual the best choice for this project (Client, cost, seasonal construction schedule, repairs, renovations, new construction, HVAC, etc.)
 - (4) General background information; education, years of experience, registrations, affiliations,
 - (5) Years of service with your company
 - (6) Prior two (2) employers and years of service with each
 - (7) Last three (3) completed or ongoing project assignments

- (8) Contact information (Name, title, email address, phone number) for Owner's representative or Architect that could address questions regarding this individual for the last three (3) completed or ongoing projects.

TAB F - Additional Information

11. Letters of Recommendation: Furnish five (5) letters of recommendation from past or current K-12 Texas school district customers of the respondent, preferably from those projects listed in section VII.4 and VII.5.

TAB G - EMR

12. Furnish companies EMR ratings for the past five (5) years.

TAB H - Financial Information

13. Attach an audited financial statement, including your organization's latest balance sheet and income statement showing the following items. For confidentiality, this may be submitted in a separate sealed envelope noting FINANCIALS, CONFIDENTIAL. Financials are only reviewed by the district CFO:

- a) Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses).
- b) Non-current assets (e.g., net fixed assets, other assets).
- c) Current liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes).
- d) Non-current liabilities (e.g., notes payable).
- e) Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus, and retained earnings).
- f) Name and address of firm preparing attached financial statement and date thereof.
- g) Is the attached financial statement for the identical organization named under item VII.13 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent subsidiary).
- h) Will the organization whose financial statement is attached act as guarantor of the contract for construction?
- i) Provide the name, address and phone number of your financial institution.

14. Bonding

- a) Provide Name of bonding company and name and address of agent.

- b) Provide letter from bonding company stating the currently available bonding capacity of your company (Bonding limit minus current obligations)?

TAB I - Optional Information

15. Furnish any additional content not requested by other sections of this RFP that demonstrates the qualifications of your company.

VIII. AMENDMENTS TO THE RFP

Changes, amendments, or written responses to questions received regarding this RFP will be posted on the Tomball ISD Website from the link within this document. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission. No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only. While it is possible that other websites may have this posting, the official site for downloading documents is the Tomball ISD website only.

IX. RESTRICTIONS ON COMMUNICATION

The Respondent's, or any agent or representative of Respondent shall not undertake any activities or actions to promote or advertise their qualifications or submission to any member of the Owner's Board of Trustees, the Owner's Administration or their respective staff persons, except as specifically requested in writing by to the named point of contact in section 0 at any time between the date of release of the RFP and the date of award of a contract by the Owner's Board of Trustees. This restriction extends to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or submission submitted by Respondent's. Violation of this provision by Respondent or his/her/its agent may lead to disqualification of his submission from consideration. The Owner reserves the right to contact any Respondent for clarification after responses are opened and/or to further negotiate with any Respondent if such is deemed desirable by Owner.

X. EVALUATION

The Owner will conduct a comprehensive evaluation of all submissions received in response to this RFP. The Owner may appoint a selection committee to perform the evaluation.

Each submission will be analyzed to determine overall responsiveness, qualifications under the RFP and Respondent's cost proposal. Respondents will be scored based upon these criteria listed in this RFP. The Owner may request additional information from Respondent's at any time prior to final approval of a selected Respondent. Final approval of a selected Respondent(s) is subject to the action of the Board of Trustees of the Owner.

The Owner reserves the right to conduct all research it deems necessary as part of its evaluation of Respondent's including their previous clients.

Following the RFP scoring process, a short list will be created for interviews. Proposers are required to be available on the date listed in the Probable Schedule of Events. Times will be provided when notified of shortlisting. Interviews will be conducted as a panel to include

Tomball ISD staff, LAN (District Program Manager) and the Architect. Following the interviews, Tomball ISD will review all data and make recommendations to the Board of Trustees.

The Owner will utilize the following criteria in the evaluation of responses:

Points Value	Category	Evaluation Method	Reference Section
30	Proposed Amount for Base Proposal and Owner-Selected Alternates	Respondents will receive an assigned share of the total available points in this category according to banded point categories shown in the "Table of Awarded Points". A formula will be used as follows to determine the award band for your proposal based on your percentage above the low bid: $\text{Percentage Above Low Bid} = \frac{(\text{Your combination of base price proposal and Owner-selected Alternates} - \text{minimum proposed combination of base price proposals and Owner-selected Alternates})}{(\text{minimum proposed combination of base price proposals and Owner-selected Alternates})}$ The result of the formula will be used to proportion the points awarded based on the "Table of Awarded Points"	XIV Forms
25	Evaluation Survey of Company References and Project Contacts	Respondent's references and stated project contacts will be sent a request to participate in a survey of your company. The weighted average overall score for your company will be used to allocate a pro-rated share of the total available points in this category. If 4 or fewer responses are received, your company will earn fractional points for this category. You are responsible for accuracy of email address. A formula will be used as follows: ("Reference Factor" * points available in the category). "Reference Factor" is determined as follows: If 4 or fewer responses = $\frac{(\text{Your Firm Average Score} - \text{Min of all Firms})}{(\text{Max of all Firms} - \text{Min of all Firms})} * (\text{number of responses} * 20\%)$ OR If 5 or more responses = $\frac{(\text{Your Firm Average Score} - \text{Min of all Firms})}{(\text{Max of all Firms} - \text{Min of all Firms})}$. A minimum value not less than 20% of the available points will be awarded if 5 or more responses are received.	VII.4, VII.5
15	History of Company Performance	Respondent demonstrates consistent and average past and current workload to staff ratio, showing ability to adequately staff the work and company stability. Respondent shows no or little past history of claims, suits and failure to perform. Respondent shows low number of RFI Generated per project. Respondent shows ability to maintain cost with no cost increases. Positive safety record. Positive asset to liability ratio. Adequate bonding capacity. Strength of letters of reference.	VII.3, VII.4.n), VII.5.m), VII.7, VII.4.o), VII.5.n), VII.4.h), VII.4.i), VII.4.j), VII.5.h), VII.5.i), VII.8, VII.13, VII.14, VII.11

10	Similar Company Project Experience and Qualifications	Respondent <u>company</u> demonstrates similar company project experience by showing high proportion of Harris County and contiguous county region work, projects of comparable cost, complexity and timeframe to the work in the RFP. Respondent demonstrates high proportion of past experience with subcontractors named in proposal.	VII.3, VII.4, VII.4.p), VII.5.o), VII.5, VII.6, XXXIII
10	Similar Individual Personnel Project Experience and Qualifications	Respondent <u>individual personnel</u> proposed for the work in the RFP demonstrate similar project experience by showing high proportion of Harris County and contiguous county region work, projects of comparable cost, complexity and timeframe to the work in the RFP. Organizational approach to the project is clear.	VII.10.a), VII.9
5	Safety EMR score	Respondents will receive a pro-rated share of the total available points in this category. Respondent shows positive safety EMR score, relative to other respondents.	0
5	Financial stability	Respondents will receive a pro-rated share of the total available points in this category. Respondent shows positive asset to liability ratio. Adequate bonding capacity.	0

Table of Awarded Points

Percentage Above Low	Percentage of Available Points Allocated
0% to 0.0125%	100.00%
0.0126% to 0.25%	99.50%
0.26% to 0.51%	98.50%
0.52% to 0.77%	97.50%
0.78% to 1.03%	96.50%
1.04% to 1.29%	95.50%
1.3% to 1.55%	94.00%
1.56% to 1.81%	92.50%
1.82% to 2.07%	91.00%
2.08% to 2.33%	89.50%
2.34% to 2.59%	88.00%
2.6% to 2.85%	86.25%
2.86% to 3.11%	84.50%
3.12% to 3.37%	82.75%
3.38% to 3.63%	81.00%
3.64% to 3.89%	79.25%
3.9% to 4.15%	77.50%
4.16% to 4.41%	75.50%
4.42% to 4.67%	73.50%
4.68% to 4.93%	71.50%
4.94% to 5.19%	69.50%
5.2% to 5.45%	67.50%
5.46% to 5.71%	65.50%
5.72% to 5.97%	63.25%
5.98% to 6.23%	61.00%
6.24% to 6.49%	58.75%
6.5% to 6.75%	56.50%
6.76% to 7.01%	54.25%

7.02% to 7.27%	52.00%
7.28% to 7.53%	49.50%
7.54% to 7.79%	47.00%
7.8% to 8.05%	44.50%
8.06% to 8.31%	42.00%
8.32% to 8.57%	39.50%
8.58% to 8.83%	37.00%
8.84% to 9.09%	34.50%
9.1% to 9.35%	32.00%
9.36% to 9.61%	29.25%
9.62% to 9.87%	26.50%
9.88% to 10.13%	23.75%
10.14% to 10.24%	21.00%
10.25% to 11%	18.25%
11.01% to 12%	15.50%
12.01% to 13%	12.75%
13.01% to 14%	9.75%
15.01% to 17%	6.75%
17.01% to 19%	3.75%
19.01% to 100%	0.75%

XI. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

The Form of Contract will be AIA Document A101 - 2017, paired with the AIA Document A201-2017 General Conditions which will be issued via Addendum to Section XXXV, including incorporated reference files.

The Contract, if awarded, will be awarded to the Respondent whose Submission is deemed most advantageous providing the best overall value to the Owner, upon approval of the Owner's Board of Trustees.

The Owner may accept any Submission in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of the Owner; however, final selection of a Respondent is subject to approval by the Owner's Board of Trustees.

The Owner reserves the right to accept one or more Submissions or reject any or all Submissions received in response to this RFP, and to waive informalities and irregularities in the Submissions received. The Owner also reserves the right to terminate this RFP, and reissue a subsequent Solicitation, and/or remedy technical errors in the RFP Process.

This RFP does not commit the Owner to enter into a Contract, award any services related to this RFP, nor does it obligate the Owner to pay any costs incurred in preparation for submitting of the Submission for this RFP, or in anticipation of a Contract.

Access and Audit Rights: The Owner, or its authorized representative, shall be afforded unrestricted access to and permitted to inspect and copy all the respondent's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract. The respondent shall preserve all such records for a period of five (5) years, or for such longer period as may be required by law, after final payment under this Contract. If this Contract is funded from contract/grant funds provided by the U.S. Government or the State of Texas, the Contract, books, and records shall be

available for review and audit by the Comptroller General of the U.S. and/or the Inspector general of the federal sponsoring agency, or the State of Texas and its duly authorized representatives.

Appeal/Protest Process. Any respondent who submitted a proposal may appeal the Owner's award, if the appeal is based on deviations from laws, rules, regulations, or Owner policies. Owner Board Policy GF(Local) applies to any respondent wishing to appeal a proposal and/or award of a contract. In the event the respondent is unsure about the award of the contract, it is the Proposer's responsibility to contact the Owner on the next business day after the award is announced and verify details concerning the award.

XII. PROPOSAL MODIFICATIONS AND WITHDRAWAL PRIOR TO PROPOSAL OPENING

A Respondent may modify a Proposal by letter at any time prior to the submission deadline for receipt of Proposals. Modification requests must be received prior to the submission deadline. Modifications made before opening time must be initialed by Respondent guaranteeing authenticity. Proposals may not be amended or altered after the official opening with the single exception that any product literature and/or supporting data required by the actual specifications, if any, will be accepted at any time prior to the Owner's Board of Trustees consideration of same.

Likewise, any Respondent may modify a proposal by submitting a supplemental proposal in person prior to the scheduled closing time for receipt of proposals. Such supplemental proposal should mention only additions or subtractions to the original proposal so as to not reveal the final prices or terms to the Owner until the sealed proposal is open.

The Respondent or his duly authorized representative may withdraw a proposal by request, provided such request is received by the Owner at the place designated for receipt of proposals and prior to the time fixed for the opening of proposals. The Proposal Bond will be returned with the proposals if withdrawn in accordance with the above. The withdrawal of a proposal does not prejudice the right of the Respondent to file a new proposal at the time and place stated.

TAB J – Includes Sections XIII - XIV

XIII. SUBMISSION CHECKLIST – INCLUDE IN YOUR PROPOSAL

Use this checklist to ensure that all required documents have been included in the submission and that they are properly tabbed and appear in the correct order.

PART 1 RESPONSE		
Document	Page Limit	Initial to indicate document is attached to submission
0 TAB A - Letter of Interest	Unlimited	
0 TAB B - Executive Summary	Unlimited	
0 TAB C - Submission Questionnaire	Unlimited	

VII.8.a) Provide bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three years. a) Provide a loss analysis from the bidder's insurance carrier. b) Provide a loss history covering all lines of insurance coverage carried by the bidder. TAB E - Personnel	Unlimited	
0 TAB F - Additional Information	Unlimited	
0 TAB I - Optional Information	Unlimited	
0 TAB G - EMR 2. Furnish companies EMR ratings for the past five (5) years. TAB H - Financial Information	Unlimited	
EXHIBIT A –PROPOSAL FORM	Unlimited	
TAB K INCLUDES Sections XV - XXXI EXHIBIT B – BID BOND	Unlimited	
EXHIBIT C - FELONY CONVICTION NOTIFICATION	Unlimited	
EXHIBIT D - ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT	Unlimited	
EXHIBIT E – PROOF OF INSURABILITY	Unlimited	
EXHIBIT F – PROOF OF BONDING CAPACITY	Unlimited	
EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE	Unlimited	
EXHIBIT H - DEVIATION AND EXCEPTIONS FORM	Unlimited	
EXHIBIT I – CERTIFICATE OF RESIDENCY	Unlimited	
EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION	Unlimited	
EXHIBIT K – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER	Unlimited	
EXHIBIT L – FORM 1295-CERTIFICATE OF INTERESTED PARTIES	Unlimited	
EXHIBIT M – CERTIFICATION REGARDING TERRORIST ORGANIZATIONS AND BOYCOTT OF ISRAEL	Unlimited	
EXHIBIT N – CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES	Unlimited	
EXHIBIT O – CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES	Unlimited	
EXHIBIT P – CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE	Unlimited	
COMPLETED MICROSOFT EXCEL FILE IN RESPONSE TO PART VII.4 AND VII.5	Unlimited	
PART 2 RESPONSE		
TAB L – INCLUDES SECTION XXXII - XXXIII EXHIBIT R – BID ALTERNATES AND UNIT PRICE FORM	Unlimited	

EXHIBIT S – KEY SUBCONTRACTORS	Unlimited	
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XIV. EXHIBIT A –PROPOSAL FORM

Having examined the Request for Proposal prepared by the Owner, and in submitting this proposal, the undersigned agrees to the following:

1. To hold the proposal open for acceptance by the Owner for 60 days.
2. To hold alternate proposals open for acceptance by the Owner for 120 days
3. To execute Contract Documents within ten (10) days after the prescribed forms are presented for signature and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract.
4. The Owner maintains the right to reject any or all proposals, to waive informalities or minor irregularities in the proposal process and to accept the proposal which the Owner considers most advantageous. The Owner reserves the right to verify the accuracy and completeness of all responses by utilizing any information available to the Owner without regard to whether such information appears in the submission.
5. That this Proposal has been arrived at independently and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over respondents in the award of this proposal.
6. The Owner reserves the right to negotiate with any Respondent in a manner permitted by law.
7. The undersigned has reviewed the Contract and exhibits as modified by Owner and agrees to execute a final version of these contracts in accordance with the attached terms, subject to final approval by Owner.
8. By providing a response, each Applicant agrees to waive any claim it has or may have against the Owner, its Trustees, agents and employees, and any reference sources, arising out of or in connection with: the administration, evaluation, or recommendation of any response; waiver of any requirements in the Request for Proposals; acceptance or rejection of any response and award of the Contract.
9. The cost of developing a response is the sole responsibility of the Applicant. The Owner will not provide reimbursement of such cost and will not be liable for any preparation cost for any reason whatsoever.
10. Respondent has visited the site of the proposed work and fully acquaint themselves with the existing conditions there and should fully inform themselves as to the facilities involved, the difficulties and restrictions attending the performance of the contract. The Respondent should thoroughly examine and familiarize themselves with the drawings, technical specifications, and all other contract documents including this RFP. The contractor by the execution of the contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal document or to visit the site or acquaint themselves with the conditions there existing. The Owner will be justified in rejecting any claim based on lack of inspection of the site prior to the proposal. Should a conflict be discovered, it is incumbent upon the contractor to assume the higher priced or more stringent condition of the issue in question.
11. The unit price, if requested, for each of the several items in the proposal shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price proposal represents the total proposal. Any proposal not conforming to this requirement may be rejected as informal. Special attention is drawn to this condition, as the unit prices will be used to determine the amount of any change orders resulting from an increase or decrease in quantities.

Submit with Part 1

Company Name:_____

- 1. Contract Time:** The undersigned agrees that, if the proposal is accepted, the Date of Commencement shall be as established in a “Notice to Proceed” from the Owner but no later than, January 15, 2024, and to obtain Substantial Completion of all work not later than May 30, 2026, subject to extensions of time as described in the Contract Documents. Failure of the contractor to submit, execute or otherwise return all necessary documents shall remain the sole responsibility of the contractor and the dates noted remain unchanged.
- 2. Construction Permit:** The undersigned acknowledges that the bid or proposal has been submitted with the understanding that the time from submission of the bid, or proposal until a building permit will be released is estimated as 90 calendar days. The owner may issue a notice to proceed prior to the date when a building permit is released and the contractor shall commence all activities on the project for which a building permit is not required, such as project submittals, site mobilization, subcontractor buyout, and similar activities. As this project is governed by Harris County, the rules regarding start shall be determined by industry standard within that jurisdiction. The decision to proceed with this project rests on the Owner. Where a permit has not been issued but work can proceed, the contractor agrees to proceed until such time as they cannot proceed with necessary approvals and inspections.

- 3. Addenda:** The undersigned acknowledges receipt of:

Addenda 1dated --/--/----

Addenda 2dated --/--/----

Addenda 3dated --/--/----

Addenda 4dated --/--/----

Addenda 5dated --/--/----

- 4. Base Proposal:** The undersigned agrees to perform the complete Work of this Project, for the lump sum price of (The Base Proposal includes an Owner’s contingency of \$7,000,000.00.):

_____ Dollars

(Amount written in words governs)

\$_____ (Amount in figures)

Submit with Part 1

Company Name:_____

Company:_____

Address:_____

City

ST

Zip

Telephone:_____ Fax:_____ Email:_____

Printed Name/Title:_____ Signature:_____

State whether firm is a: ☐ Corporation ☐ Partnership ☐ Individual

Submit with Part 1

TAB K INCLUDES Sections XV - XXXI

XV. EXHIBIT B – BID BOND

A bond in the amount of five (5) percent of the proposal issued by an acceptable surety licensed to do business in the State of Texas shall be submitted with each proposal. A certified check or bank draft payable to the Owner or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Proposal Bond. Respondents are advised that performance and payment bonds are required for each project.

The bond or its comparable, will be returned to the Respondent as soon as practical after the opening of the proposals.

Furnish Bid Bond.

Submit with Part 1

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, _____ as PRINCIPAL, and _____
_____, as SURETY are held and firmly bound unto _____
_____ hereinafter called the "Owner", in the penal sum of _____
_____ Dollars, (\$ _____), lawful money of the United States, for the payment of which sum well and
truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally,
firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying Bid, dated __
_____, for _____

NOW, THEREFOR, if the Principal shall not withdraw said Bid within the period specified therein after the opening of the
same, or, if no period be specified, within sixty (60) days after the said opening, and shall within the period specified
therefor, or if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature,
enter into a written contract with the Owner in accordance with the Bid as accepted, and give bond with good and sufficient
surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or in the event
of the withdrawal of said Bid within the period specified, or the failure to enter into such Contract and give such bond within
the time specified, if the Principal shall pay the Owner the difference between the amount specified in said Bid and the
amount for which the local Public Agency may procure the required work or supplies or both, if the latter be in excess of
the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above-bounded parties have executed this instrument under their several seals this _____
day of _____, the name and corporate seal of each corporate party being hereto affixed and these
present signed by its undersigned representative, pursuant to authority of its governing body.

(SEAL)

(SEAL)

Attest:

By: _____

Affix

Corporate

Seal

Submit with Part 1

Attest:

By: _____

Affix

Corporate

Seal

Attest:

By: _____

Countersigned

By _____

* Attorney-in-Fact, State of _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____, Secretary of the Corporation named as Principal in the within bond; that _____, who signed the said bond on behalf of the Principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested to, for and in behalf of said corporation by authority of this governing body.

Corporate

Seal

Title: _____

* Power-of-attorney for person signing for surety company must be attached to bond.

Submit with Part 1

XVI. EXHIBIT C - FELONY CONVICTION NOTIFICATION

State of Texas Legislative Senate Bill No.1, Section 44.034, Notification of Criminal History, Subsection (a) states "a person or business entity that enters into a contract with a school Owner must give advance notice to the Owner if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states "a school Owner may terminate a contract with a person or business entity if the Owner determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The Owner must compensate the person or business entity for services performed before the termination of the contract."

This notice is not required of a Publicly-held Corporation.

I, the undersigned agent for the company named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

Vendor's Name _____

Authorized Company Official's Name (Printed) _____

My company is a publicly held corporation; therefore, this reporting requirement is not applicable: Signature of Company Official

Submit with Part 1

b. My company is not owned nor operated by anyone who has been convicted of a felony.
Signature of Company Official

c. My company is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s)_____

Details of Conviction(s)_____

Signature of Company Official_____

Submit with Part 1

XVII. EXHIBIT D - ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT

The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this submission in collusion with any other Respondent, and that the contents of this submission as to prices, terms or conditions of said submission have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this submission.

Vendor: _____

Address: _____

Phone: _____

Respondent (Signature): _____

Respondent (Print Name): _____

Position with Company: _____

Signature of Company Official _____

Authorizing Submission: _____

Company Official (Print Name): _____

Official Position: _____

Submit with Part 1

XVIII. EXHIBIT E – PROOF OF INSURABILITY

Furnish proof of insurability from your insurance provider meeting the requirements set forth in the Contract, attached to this RFP. This can be in the form of a letter or other sample certificates attesting to the ability to comply with the insurance requirements.

Submit with Part 1

XIX. EXHIBIT F – PROOF OF BONDING CAPACITY

Furnish proof of bonding capacity from your bonding agent stating the **bonding limits, current obligations and free bonding capacity** meeting the requirements set forth in the Contract Documents, attached to this RFP. This can be in the form of a letter.

Submit with Part 1

XX. EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE

Circle below to indicate the business structure of Respondent.

Individual/Sole Proprietorship

Partnership or Joint Venture

Corporation

Other Entity (State Type)

The undersigned certifies that (s) he is _____(title) of the Respondent entity named below; that (s)he is authorized to sign this Submission Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity, if any, named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Submission as required by this RFP, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity, if any, is:

11-digit Comptroller's Taxpayer Number Employer Identification Number: _____

Respondent Organization Name_____

By: _____

Printed Name: _____

Title: _____

By: _____

Submit with Part 1

(If Respondent is a Joint Venture, an authorized signature from a representative of each party is required)

Printed Name: _____

Title: _____

By signing this Signature Page and Declaration of Compliance, I do hereby declare that I have read the Request for Proposal on which our Submission is submitted with full knowledge of the requirements and do hereby agree to furnish all services in full accordance with the requirements outlined in the Request for Proposal.

By signing and executing this submission, I further certify on behalf of my organization and represent to the Owner that Respondent has not offered, conferred or agreed to confer any pecuniary benefit, as defined by TEXAS PENAL CODE ANN.§ 218, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this submission; the Respondent also certifies and represents that Respondent has not offered, conferred or agreed to confer a pecuniary benefit or other things of value as consideration for the recipients decision, opinion, recommendation, vote or other exercise of discretion concerning this submission; the Respondent certifies and represents that Respondent has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the Owner concerning this submission on the basis of any consideration not authorized by law; the Respondent also certifies and represents that Respondent has not received any information not available to other Respondent so as to give the undersigned a preferential advantage with respect to this submission; the Respondent further certifies and represents that Respondent has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Respondent will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Owner in return for the person having exercised the persons official discretion, power or duty with respect to this submission; the Respondent certifies and represents that it has not nor and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Owner in connection with information regarding this submission, the submission of this submission, the award of this submission or the performance, delivery or sale pursuant to this submission.

Submit with Part 1

XXI. EXHIBIT H - DEVIATION AND EXCEPTIONS FORM

All respondents are expected to fully comply with all Terms and Conditions of this RFP, including all dates noted, the AIA A101-2017 Standard Form of Agreement and the AIA A201-2017 General Conditions of the Contract for Construction as amended by the Owner. Any proposed deviations or exceptions to the Terms and Conditions of this RFP, including AIA documents, MUST be noted on this sheet. In the absence of any entry on this Deviation Form, the respondent assures the Owner of their full compliance with the Terms and Conditions of this RFP and the AIA documents.

Any exceptions to the modified AIA Contract Documents should be noted along with suggested wording for each exception. The owner may consider any such exceptions in its evaluation of the Proposer’s proposal but is not obligated to accept any such exceptions or proposed modifications. If the Proposer and Owner are unable to resolve any exceptions to the mutual satisfaction of both parties, the Owner reserves the right to reject the Proposer’s proposal and award the Contract to another Proposer. Each Proposer, by making its proposal, represents that the Proposer has read, understands, and agrees to Owner’s modifications to the AIA Documents. If a project is awarded to a Proposer and the Proposer requests changes to the Contract Documents, the Owner reserves the right to cancel the award and re-award the Project to an alternate Proposer. Requests to modify the terms of the Contract Documents during the pendency of this RFP will be denied.

Note that this deviation and exceptions form is NOT intended to note any deviations from the Construction Documents or Specifications and other information contained within the Project Manual. Any questions regarding those must be submitted in writing, per the terms of this RFP, and will be addressed accordingly in an Addenda. Should there be an issue which has not been resolved by addendum, and the contractor takes exception to the position advertised, that exception MUST be listed on this form to be considered.

The Owner will, at its sole discretion, determine whether the deviations listed below are acceptable. Furnish a description of the requested deviation, noting the impact that the proposed deviation will have on the cost and time of the project, if any, if accepted by the Owner. THIS DEVIATION FORM MUST BE SIGNED BY EACH RESPONDENT WHETHER THERE ARE DEVIATIONS LISTED OR NOT AND SUBMITTED WITH THIS PROPOSAL. THE PROPOSAL FURNISHED SHALL NOT BE QUALIFIED OR CONDITIONED IN ANY WAY ON ACCEPTANCE OF THE DEVIATIONS AND EXCEPTIONS LISTED BELOW.

DEVIATION:	Cost (+/-)	Time (+/-)
------------	------------	------------

Submit with Part 1

Respondent Organization Name_____

Authorized Signature_____

Submit with Part 1

XXII. EXHIBIT I – CERTIFICATE OF RESIDENCY

The State of Texas has passed a law concerning non-resident contractors. This law can be found in the Texas Government Code under Chapter 2252, Subchapter A. This law makes it necessary for the Owner to determine the residency of its bidders. In part, this law reads follows:

“Section: 2252.001

(3) ‘Non-resident bidder’ refers to a person who is not a resident.

(4) ‘Resident bidder’ refers to a person whose principal place of business in this state, including a

Contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Section 2252.002

“A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the following:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing relating to the contract will be performed.”

I certify that _____
(Name of Company Bidding) is, under Section: 2252.001 (3) and (4),

_____ Resident Bidder

_____ Non-resident Bidder

My or our principal place of business under Section: 2252.001 (3) and (4), is in the city of

_____ in the state of _____

Signature of authorized Company Representative

Print Name

Title

____/____/____

Date

Submit with Part 1

XXIII. EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION

I have read the conditions and specifications provided in the Request for Proposal document attached. I affirm, to the best of my knowledge, the company I represent has not been debarred or suspended from conducting business by the federal government or the State of Texas.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to applicable law, the contractor certifies that during the term of an award for all contracts by the Owner resulting from this procurement process, the contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Contractor shall immediately provide written notice to the Owner if at any time the contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Owner may rely upon a certification of a contractor that the contractor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the Owner knows the certification is erroneous.

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER _____ FAX NUMBER DATE _____

Submit with Part 1

XXIV. EXHIBIT K – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

Complete and submit Internal Revenue Service for “W-9”

Submit with Part 1

XXV. EXHIBIT L – FORM 1295-CERTIFICATE OF INTERESTED PARTIES

Complete and submit Texas Ethics Commission Form 1295 at the Texas Ethics Commission web site at <https://ethics.state.tx.us/forms/1295.pdf>.

Certificate of Interested Parties (Form 1295 – must be filled out electronically with the Texas Ethics Commission's online filing application and attached to proposal)

Owner is required to comply with House Bill 1295, which amended the Texas Government Code by adding Section 2252.908, Disclosure of Interested Parties. Section 2252.908 applies to a contract of Owner that (1) requires an action or vote by the Owner Board of Trustees before the contract may be signed; (2) has a value of at least \$1 million; or (3) is for services that would require a person to register as a lobbyist under Tex. Gov't Code Chapter 305. Section 2252.908 prohibits Owner from entering into a contract resulting from this RFP with a business entity unless the business entity submits a Disclosure of Interested Parties (Form 1295) to Owner at the time business entity submits the signed contract. Effective January 1, 2018, the Form 1295 requirement does not apply to: (1) a contract with a publicly traded business entity or wholly owned subsidiary of the same; (2) an electric utility; or (3) a gas utility. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Texas Ethics Commission. The following **definitions** apply:

- (1) **"Business Entity"** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV'T CODE § 2252.908(1).
- (2) **"Interested Party"** means a person:
 - a) who has a controlling interest in a business entity with whom Owner contracts; or
 - b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. TEX. GOV'T CODE § 2252.908(3).
- (3) **"Controlling interest"** means:
 - a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
 - b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
 - c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. *Subsection (c) does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.* TEX. ETHICS COMM. RULE 46.3(c).
- (4) **"Intermediary"** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
 - a) receives compensation from the business entity for the person's participation;
 - b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
 - c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

As a "business entity," all vendors must:

- (1) **complete Form 1295 electronically** with the Texas Ethics Commission using the online filing application, which can be found at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
 - **All vendors must complete Form 1295, even if no interested parties exist**
 - In Section 2, insert Tomball Independent School District
 - In Section 3, insert the RFP# 947-23 TWC-High School for this proposal
- (2) **print a copy of the completed form** (make sure that it has a computer-generated certification number in the "Office Use Only" box)
- (3) have an authorized agent of the business entity **sign the form**
- (4) **submit** the completed Form 1295 by **attaching the form to your proposal.**

Submit with Part 1

OWNER must acknowledge the receipt of the filed Form 1295 by notifying the Texas Ethics Commission of the receipt of the filed Form 1295 no later than the 30th day after receipt by OWNER. After OWNER acknowledges the Form 1295, the Texas Ethics Commission will post the completed Form 1295 to its website with seven business days after receiving notice from OWNER.

Submit with Part 1

XXVI. EXHIBIT M – CERTIFICATION REGARDING TERRORIST ORGANIZATIONS AND BOYCOTT OF ISRAEL

Respondent 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. (Tex. Gov't Code §§ 2252.151-.154)

If (a) Respondent is not a sole proprietorship; (b) Respondent has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2271 of the Texas Government Code, the Respondent hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Respondent, if any (the "Respondent Companies"), boycotts Israel, and the Respondent agrees that the Respondent and Respondent Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____

Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER _____ DATE _____

Submit with Part 1

XXVII. EXHIBIT N – CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV'T CODE Ch. 2274 of SB 13 (87th session), Vendor hereby certifies and verifies that Vendor, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, does not boycott energy companies and will not boycott energy companies during the term of the Agreement. For purposes of this Agreement, the term "company" shall mean an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." See TEX. GOV'T CODE § 809.001(1).

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER _____ DATE _____

Submit with Part 1

XXVIII. EXHIBIT O – CERTIFICATION PROHIBITING DISCRIMINATION AGAINST FIREARM AND AMMUNITION INDUSTRIES

If (a) Vendor is not a sole proprietorship; (b) Vendor has at least ten (10) full-time employees; (c) this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds; (d) the Agreement is not excepted under TEX. GOV'T CODE § 2274.003 of SB 19 (87th leg.); and (e) Owner has determined that Vendor is not a sole-source provider or Owner has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV'T CODE Ch. 2274 of SB 19 (87th session), Vendor hereby certifies and verifies that Vendor, or 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 these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this Agreement, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association." See TEX. GOV'T CODE § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." See TEX. GOV'T CODE § 2274.001(3) of SB 19.

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____

Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER _____ DATE _____

Submit with Part 1

XXIX. EXHIBIT P – CERTIFICATION REGARDING CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE

Owner is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to Vendor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by Owner for product warranty and support purposes. Vendor certifies that neither it nor its parent company nor any affiliate of Vendor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this Agreement, “critical infrastructure” means “a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.” See TEX. GOV'T CODE § 2274.0101(2) of SB 1226 (87th leg.). Vendor verifies and certifies that Vendor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

If Respondent is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov't Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.” Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Respondent hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to the Owner for the duration of the Agreement; (2) promptly provide to the Owner any contracting information related to the Agreement that is in the custody or possession of the Respondent on request of the Owner; and (3) on completion of the Agreement, either (a) provide at no cost to the Owner all contracting information related to the Agreement that is in the custody or possession of Respondent, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the Owner.

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepared By: _____

Company Official's Name: _____

Submit with Part 1

Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER _____ DATE _____

Submit with Part 1

XXX. EXHIBIT P – ANTITRUST CERTIFICATIONS STATEMENT (TEX. GOVERNMENT CODE § 2155.005)

I affirm under penalty of perjury of the laws of the State of Texas that:

1. I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
2. In connection with this bid, neither I nor any representatives of the Company have violated any provision of the Texas Antitrust laws codified in Tex. Bus. & Comm. Code Chapter 15;
3. In connection with this bid, neither I nor any representative of the Company have violated any federal antitrust law; and
4. Neither I nor any representatives of the Company have directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepared By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER _____ DATE _____

Submit with Part 1

XXXI. EXHIBIT Q – CONFLICT OF INTEREST DISCLOSURE STATEMENT

The Owner is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. House Bill 23 significantly changed Chapter 176 as well as the required disclosures and the corresponding forms. As of September 1, 2015, any vendor who does business with the Owner or who seeks to do business with the Owner must fill out the new Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:

1. If the vendor has an employment or other business relationship with a local government officer of the Owner or a family member of the officer, as described by section 176.003(a)(2)(A) of the Texas Local Government Code; or
2. If the vendor has given a local government officer of the Owner, or a family member of the officer, one or more gifts with the aggregate value of \$100, excluding any gift accepted by the officer or a family member of the officer if the gift is: (a) a political contribution as defined by Title 15 of the Election Code; or (b) a gift of food accepted as a guest; or
3. If the vendor has a family relationship with a local government officer of the Owner.

“Vendor” means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries. *Texas Local Government Code 176.001(7).*

“Business relationship” means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on: (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity; (B) a transaction conducted at a price and subject to terms available to the public; or (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency. *Texas Local Government Code 176.001(3).*

“Family relationship” means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code. *Texas Local Government Code 176.001(2-a).*

“Local government officer” means: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. *Texas Local Government Code 176.001(4).*

Owner Board of Trustees include:

Mr. Lee McLeod – President
Mr. John E. McStravick – Vice President
Mr. Justin Unser – Secretary
Mr. Mark Lewandowski – Assistant Secretary
Dr. Michael J. Pratt – Trustee
Mrs. Tina Salem – Trustee
Mr. Matt Schiel - Trustee

Owner Superintendent:

Dr. Martha Salazar-Zamora

Submit with Part 1

If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.

In the event of changed circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware that a conflict of interest exists.

Submit with Part 1

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

Submit with Part 2

Company Name: _____

TAB L – INCLUDES SECTION XXXII - XXXIII

XXXII. EXHIBIT R – BID ALTERNATES AND UNIT PRICE FORM

Alternates: If the Owner elects to accept any or all of the Alternates, the undersigned agrees to modify the Base Proposal as stipulated. **Circle Add or Deduct** for each Alternate below. **IF YOU DO NOT NOTE ADD/DEDUCT, WE MUST ASSUME AN ADD.**

Alternate NO. 1: Omit Practice Gym (RM 900) and associated exterior walls, flooring, roofing, structural elements, and utilities as specified as shown on the drawings.

Add/Deduct _____ Dollars
(Amount written in words governs)

\$ _____ (Amount in figures)

Alternate NO. 2: Provide optional adjustment to Base Proposal.

Add/Deduct _____ Dollars
(Amount written in words governs)

\$ _____ (Amount in figures)

Alternate NO. 3: Chiller Manufacturers:

Alternate 3A – Carrier

Add/Deduct _____ Dollars
(Amount written in words governs)

\$ _____ (Amount in figures)

Alternate 3B – Trane

Add/Deduct _____ Dollars
(Amount written in words governs)

\$ _____ (Amount in figures)

Submit with Part 2

Company Name:_____

Alternate NO. 4: AHU Manufacturers:

Alternate 4A – Carrier

Add/Deduct _____Dollars

(Amount written in words governs)

\$ _____(Amount in figures)

Alternate 4B – Trane

Add/Deduct _____Dollars

(Amount written in words governs)

\$ _____(Amount in figures)

Alternate NO. 5: Cost to provide Refrigerant Recovery/Storage System and Tube Bundle Brushing Machine per specification section 23 6416 Centrifugal Water Chillers Article 2.04 and 2.05.

Add/Deduct _____Dollars

(Amount written in words governs)

\$ _____(Amount in figures)

Submit with Part 2

Company Name: _____

Unit Price: The undersigned further agrees that in case adjustments to the work or material is authorized from what is shown in the Contract the following Unit Prices will be used in adjusting the Contract Price. Work shall be in conformance with the Contract Documents. **All unit prices shall live as priced for the duration of the contract without further negotiation for any reason.**

UNIT PRICE 1: ELECTRICAL DUPLEX RECEPTACLE

Provide unit price for a new 20A, 120V duplex electrical receptacle and cover plate, flush mounted in a CMU, metal stud, or demountable wall construction, circuited to an existing electrical panel within 150 feet of the outlet using a branch circuit consisting of 2 #10 AWG and 1 #10 AWG ground in 3/4 inch EMT conduit. All conduits to be concealed in wall construction. Unit price shall include a 20 amp circuit breaker to be installed in existing panel space. \$_____ each

UNIT PRICE 2: DATA DROP

Provide unit price for a data drop, flush mounted in a CMU, metal stud or demountable wall construction., wired to an IDF/MDF Room. The data drop shall consist of a single gang wall box, cabling wiring device, cover plate, 3/4 inch conduit from outlet to above accessible ceiling, plenum-rated cabling routed above accessible ceiling to the nearest MDF or IDF location within 250 feet of the outlet. Termination and testing to be included in the unit price. \$_____ each

UNIT PRICE 3: VOICE DROP

Provide unit price for a voice drop, flush mounted in a CMU, metal stud or demountable wall construction., wired to the telecommunications/MDF room. The voice drop shall consist of a single gang wall box, voice jack, cover plate, 3/4 inch conduit from outlet to above accessible ceiling, plenum-rated voice cable routed above accessible ceiling to telecommunication head end equipment. Termination and testing to be included in the unit price.

\$_____ each

UNIT PRICE 4: 4 ½" THICK CONCRETE WALK PER SQUARE FOOT

This unit cost shall establish the amount to the contract price for the Contractor to add or deduct 4 ½" thick concrete walk (minimum 100 SF) per Square Foot.

\$_____ each

UNIT PRICE 5: 7" THICK CONCRETE DRIVE PER SQUARE FOOT

This unit cost shall establish the amount to the contract price for the Contractor to add or deduct 7" thick concrete drive (minimum 100 SF) per Square Foot.

\$_____ each

UNIT PRICE 6: LIFE SAFETY DEVICES (including all associated cabling and programming)

Submit with Part 2

Company Name:_____

This unit cost shall establish the amount to be added or deducted from the contract price for the Contractor to add /deduct Fire Alarm devices.

- | | | |
|-----------------------------------|---------|------|
| 1. Exterior Horn To Speaker | \$_____ | each |
| 2. Interior Horn To Speaker | \$_____ | each |
| 3. Interior Visual Strobe | \$_____ | each |
| 4. Interior Speaker/Visual Strobe | \$_____ | each |
| 5. Smoke Detector | \$_____ | each |
| 6. Heat Detector | \$_____ | each |
| 7. Manual Pull Station | \$_____ | each |
| 8. Stopper 2 Pull Station Cover | \$_____ | each |
| 9. Annunciator Panel | \$_____ | each |
| 10. Duct Detector | \$_____ | each |
| 11. Relay | \$_____ | each |
| 12. Supervisory | \$_____ | each |
| 13. Waterflow | \$_____ | each |
| 14. Amplifier | \$_____ | each |
| 15. Remote Power Supply | \$_____ | each |

UNIT PRICE 7: 4" RESILIENT BASE 100 LINEAR FEET

This unit cost shall establish the amount to be added or deducted to the contract price for the Contractor to properly remove existing base and install 4" resilient base.

\$_____ each

UNIT PRICE 8: GRAPHIC SIGNS

This unit cost shall establish the amount to be added or deducted to the contract price for the Contractor to remove existing signage and install new as described below:

- | | | |
|---------------------------------------|---------|------|
| 1. Sign Type A | \$_____ | each |
| 2. Sign Type B | \$_____ | each |
| 3. Sign Type C | \$_____ | each |
| 4. Sign Type D | \$_____ | each |
| 5. Sign Type E | \$_____ | each |
| 6. Sign Type F | \$_____ | each |
| 7. Max Occupancy Signage | \$_____ | each |
| 8. FDC Connection Signage | \$_____ | each |
| 9. Wayfinding Signage (2 lines text) | \$_____ | each |
| 10. Wayfinding Signage (3 lines text) | \$_____ | each |
| 11. Wayfinding Signage (4 lines text) | \$_____ | each |

UNIT PRICE 11: EXIT SIGN

Submit with Part 2

Company Name:_____

This unit cost shall establish the amount to be added to the contract price to provide and install one (1) exit sign. Price shall include wiring to nearest available emergency circuit, up to 200 feet.

\$_____ each

UNIT PRICE 13: SECURITY FILM

This unit cost shall establish the amount to be added to the contract price to provide and install security film on existing exterior glazing (minimum 200 square feet).

- | | | |
|-----------------|---------|-------------|
| 1. Armor Glass | \$_____ | Square foot |
| 2. Saint Gobain | \$_____ | Square foot |
| 3. 3M | \$_____ | Square foot |

UNIT PRICE 14: Topsoil

Each 1,000 square yards of prepared topsoil, 2" uniform depth

\$_____ Square yard

Unit Price NO. 15: Backfill Offsite Sources

Each cubic yard of backfilling, meeting fill requirements of construction documents, compacted in lifts as required by construction documents.

\$_____ Square yard

Unit Price NO. 16: Backfill Onsite Sources

Each cubic yard of backfilling, meeting fill requirements of construction documents, compacted in lifts as required by construction documents.

\$_____ Square yard

Unit Price NO. 17: Concrete Poured from Truck

Each cubic yard structural concrete, off the truck, no pumping, placement, or finishing. as required by construction documents.

\$_____ Square yard

Unit Price NO. 18: Concrete Pumped

Each cubic yard structural concrete, as required by construction documents.

\$_____ Square yard

Submit with Part 2

Company Name:_____

Unit Price NO. 19: Fire Protection

Each fire protection sprinkler head installed in acoustic tile ceiling, including twenty feet of piping, tee, elbow, head, hangers, flex, complete assembly, installed (using type of system described in construction documents as base bid)

\$_____ Ea.

Unit Price NO. 20: Exterior Fire Horn Device

Each exterior fire horn device, including J-box, conduit, cabling, weatherproofing, as required by the Contract Documents.

\$_____ Ea.

Unit Price NO. 21: Interior Fire Horn/Strobe

Each interior fire horn/strobe device, including J-box, conduit, and cabling, as required by the Contract Documents.

\$_____ Ea.

Unit Price NO. 22: Interior Fire Voice/Strobe Device

Each interior fire voice/strobe device, including J-box, conduit, and cabling, as required by the Contract Documents.

\$_____ Ea.

Unit Price NO. 23: Interior Smoke Detector

Each interior smoke detector device, including J-box, conduit, and cabling, as required by the Contract Documents.

\$_____ Ea.

Unit Price NO. 24: Interior Pull Station

Each interior pull station device, including J-box, conduit, and cabling, as required by the Contract Documents.

\$_____ Ea.

Unit Price NO. 25: Interior Heat Detector

Each interior heat detector device, including J-box, conduit, and cabling, as required by the Contract Documents.

Submit with Part 2

Company Name:_____

\$_____ Ea.

Unit Price NO. 26: Interior Emergency Exit Device

Each interior emergency exit sign device, including J-box, conduit, and cabling, as required by the Contract Documents.

\$_____ Ea.

Company:_____

Address:_____

City

ST

Zip

Telephone:_____ Fax:_____ Email:_____

Printed Name/Title:_____ Signature:_____

State whether firm is a: ☐ Corporation ☐ Partnership ☐ Individual

Submit with Part 2

Company Name:_____

XXXIII. EXHIBIT S – KEY SUBCONTRACTORS

The Owner reserves the right to select key subcontractors from the list below. Base bid shall include the subcontractor listed first in all cases. If the Owner selects a vendor other than the base bid subcontractor, the General Contractor agrees to modify their proposal to incorporate those cost adjustments by the value listed below only. No additional markup for change for scope may be made.

Provide the names of the (3) top bidding key subcontractors used in the preparation of your proposal.

Structural Concrete

1. Vendor \$
2. Vendor \$
3. Vendor \$

Mechanical

1. Vendor \$
2. Vendor \$
3. Vendor \$

Electrical

1. Vendor \$
2. Vendor \$
3. Vendor \$

Plumbing

1. Vendor \$
2. Vendor \$
3. Vendor \$

Roofing

1. Vendor \$
2. Vendor \$
3. Vendor \$

Submit with Part 2

Company Name:_____

Data Cabling

1. Vendor \$
2. Vendor \$
3. Vendor \$

Fire Alarm

1. Vendor \$
2. Vendor \$
3. Vendor \$

Building Automation

1. Vendor \$
2. Vendor \$
3. Vendor \$

Self-Performed Work List all Self-Performed work. Provide pricing for Subcontractors for the same work scope.

1. Vendor \$
2. Vendor \$
3. Vendor \$

XXXIV. EXHIBIT T – PREVAILING WAGE RATES

Prevailing Wage Rates - School Construction Trades
Effective March 1, 2016
Texas Gulf Coast Area

CLASSIFICATION	HOURLY RATE
Asbestos Worker	\$15.42
Bricklayers; Masons	\$18.34
Carpenters/Caseworker	\$21.50
Carpet Layers/Floor Installers	\$20.03
Concrete Finishers	\$16.13
Data Comm / Telecom Installer	\$23.50
Drywall Installers; Ceiling Installers	\$16.69
Electricians	\$22.44
Elevator Mechanics	\$30.00
Fire Proofing Installer	\$19.13
Glaziers	\$19.87
Heavy Equipment Operators	\$18.18
Insulators	\$16.16
Ironworkers	\$18.14
Laborers	\$11.81
Lather / Plasterer	\$18.03
Light Equipment Operators	\$15.21
Metal Building Assemblers	\$17.53
Millwrights	\$20.69
Painters/Wall Covering Installers	\$15.75
Pipefitters	\$25.70
Plumbers	\$26.50
Roofers	\$18.80
Sheet Metal Workers	\$20.46
Sprinkler Fitters	\$25.10
Steel Erector	\$19.33
Terrazzo Workers	\$19.67
Tile Setters	\$19.83
Waterproofers/Caulkers	\$19.00

This document was developed by PBK Architects, Inc. in strict accordance with the Texas Government Code Chapter 2258.

**Prevailing Wage Rates
Worker Classification Definition Sheet**

Asbestos Worker	Worker who removes & disposes of asbestos materials.
Bricklayers/Masons	Craftsman who works with masonry products, stone, brick, block or any material substituting for those materials & accessories.
Carpenter / Caseworker	Worker who builds wood structures or structures of any material which has replaced wood. Includes rough & finish carpentry, hardware and trim.
Carpet Layer / Floor Installer	Worker who installs carpets and/or floor coverings-vinyl tile.
Concrete Finisher	Worker who floats, trowels and finishes concrete.
Data Comm / Telecom Installer	Worker who installs data/telephone & television cable and associated equipment and accessories.
Drywall / Ceiling Installer	Worker who installs metal framed walls & ceilings, drywall coverings, ceiling grids & ceilings.
Electrician	Skilled craftsman who installs or repairs electrical wiring & devices. Includes fire alarm systems & HVAC electrical controls.
Elevator Mechanic	Craftsman skilled in the installation & maintenance of elevators.
Fire Proofing Installer	Worker who sprays or applies fire proofing materials.
Glazier	Worker who installs glass, glazing and glass framing.
Heavy Equipment Operator	Includes, but not limited to, all Cat tractors, all derrick-powered, all power operated cranes, back-hoe, back-filler, power operated shovel, winch truck, all trenching machines.
Insulator	Worker who applies, sprays or installs insulation.
Iron Worker	Skilled craftsman who erects structural steel framing & installs structural concrete Rebar.
Laborer / Helper	Worker qualified for only unskilled or semi-skilled work. Lifting, carrying materials & tools, hauling, digging, clean-up.
Lather / Plasterer	Worker who installs metal framing & lath. Worker who applies plaster to lathing and installs associated accessories.
Light Equipment Operator	Includes, but not limited to, air compressors, truck crane driver, flex plane, building elevator, form grader, concrete mixer (less than 14cf), conveyer.
Metal Building Assembler	Worker who assembles pre-made metal buildings.
Millwright	Mechanic specializing in the installation of heavy machinery, conveyance, wrenches, dock levelers, hydraulic lifts & align pumps.
Painter / Wall Covering Installer	Worker who prepares wall surfaces & applies paint and/or wall coverings, tape and bedding.
Pipefitter	Trained worker who installs piping systems, chilled water piping & hot water (boiler) piping, pneumatic tubing controls, chillers, boilers & associated mechanical equipment.
Plumber	Skilled craftsman who installs domestic hot & cold water piping, waste piping, storm system piping, water closets, sinks, urinals, and related work.
Roofer	Worker who installs roofing materials, Bitumen (asphalt & coal tar) felts, flashings, all types roofing membranes & associated products.
Sheet Metal Worker	Worker who installs sheet metal products. Roof metal, flashings & curbs, ductwork, mechanical equipment and associated metals.
Sprinkler Fitter	Worker who installs fire sprinkler systems & fire protection equipment.
Steel Erector	Worker who erects and dismantles structural steel frames of buildings and other structures
Terrazzo Worker	Craftsman who places & finishes Terrazzo.
Tile Setter	Worker who prepares wall and/or floor surfaces & applies ceramic tiles to these surfaces.
Waterproofing / Caulker	Worker who applies water proofing material to buildings. Products include sealant, caulk, sheet membrane, liquid membranes, sprayed, rolled or brushed.

END OF DOCUMENT

This document was developed by PBK Architects, Inc. in strict accordance with the Texas Government Code Chapter 2258.

XXXV. EXHIBIT U - AIA DOCUMENT A101-2017
TO BE ISSUED VIA ADDENDUM

DRAFT AIA® Document A101™ – 2017

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

AGREEMENT made as of the «TBD» day of «January» in the year «2024»
(In words, indicate day, month and year.)

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

Tomball Independent School District
310 S. Cherry Street
Tomball, Texas 77375

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

TBD

<< >>
<< >>
<< >>

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

RFQ #947-23 – Tomball West High School
A New 3,000 Student High School Campus
17803 Cypress Heights Drive
Cypress, Texas 77433

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

Huckabee Architects
1700 City Plaza Dr., Suite 125
Spring, Texas 77389

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

EXHIBIT B PROJECT MANAGEMENT SOFTWARE

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions as well as the RFP Document in Total unless specifically modify at execution of the Agreement), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and written Modifications signed by both parties that are issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. As used in the Contract Documents, the terms “AIA Document A201 – 2017”, “General Conditions”, “General Conditions of the Contract for Construction” or “A201-2017” shall refer to the General Conditions document that pertains to the Project, as modified or amended by the Owner for the project. This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. In the event of conflict, terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions, and the terms and conditions in the General Conditions, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve and execute a Change Order valued at or above \$50,000 or Construction Change Directive that would increase the Contract Sum more than \$50,000, or to agree to an extension to the date of Substantial or Final Completion.

§ 1.3 The Board designates the authorized representatives identified in Paragraph 8.3 to act on its behalf in other respects.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[☐] The date of this Agreement.

[☐] A date set forth in a notice to proceed issued by the Owner.

[☒] Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

« The date of commencement shall be the day that the Contractor receives a Notice to Proceed (NTP) from the Owner with any limitations or restrictions. An NTP may precede the date of execution of this Agreement. If a Building Permit is not available or other approvals are not available for the entire Project, the Contractor must commence work on those portions of the Project that do not require a Building Permit or other approvals on receipt of an NTP. Work at the Project site shall not begin until Owner has received all required payment and performance bonds and insurance. This project is located and within the Jurisdiction of Harris County.»

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

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work, not by calendar days but by the Commencement Date and the Substantial Completion Date.

§ 3.3 Substantial and Final Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

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

[☒] By the following date: «May 30, 2026»

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

Portion of Work

«All of the Athletics Fields, Flatwork, Outbuildings, Support Facilities and Infrastructure including Power, Lighting, Data (pathway) Domestic water, Irrigation, Storm Water, Sewer, Roads and Parking Lots within the confines of the encircling curb line. This requirement is not for early District use.

Final Completion is required by:»

Substantial Completion Date

October 15, 2025

May 30, 2026

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

§ 3.3.4 Subject to adjustments of the Contract Time as provided in the Contract Documents, Final Completion shall be 60 calendar days after the date of Substantial Completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price
«TBD»	

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

Item	Price	Conditions for Acceptance
«TBD»		

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

Item	Price
«Owner Betterment Allowance »	\$7,000,000.00

§ 4.3.1 The Contract Sum contains an Owner's Contingency / Owner Betterment Allowance. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Owner's authorized representative may approve any expenditure from Owner's Contingency without further Board approval. Pending review of the scope and cost, a need to notify the Board prior to proceeding. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

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

Item	Units and Limitations	Price per Unit (\$0.00)
«TBD»		

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

« \$2,000 per Calendar Day »

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

«Not Applicable»

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

«Submission of a draft copy shall be presented to the Architect and Owner no later than the 21st of each month or the first business day immediately after this date when the 21st falls on a weekend. The Architect will proceed with

review and verification of the work complete comparing it to the percentage invoiced. The Program Manager will review concurrently for administrative correctness. Once a final “draft” is complete, the Contractor shall submit into Project Mates the assumed final copy for processing. It is incumbent upon the Contractor to ensure there are no mathematical errors exist and that all supporting backup documentation requested or required is included. Until the Application for Payment has passed all involved parties, it is not assumed to be correct and timing on payment does not begin. »

§ 5.1.3 The Contractor shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Contractor of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Contractor within forty-five (45) days of receipt of the Certificate for Payment from the Architect and Program Manager, if applicable, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum, less any unused Owner’s contingency, among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require, but shall contain as a minimum, individual line items for each section of the table of contents of the Project Manual separated by material costs and labor costs. Additionally, General Conditions costs shall be separated into individual line items. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers. Additionally, beginning with the second application for payment, proof of each payment to Contractor’s subcontractors and suppliers for payment within 61-days after payment. The Application for Payment shall be submitted on a schedule of values basis. This schedule of values shall be used as a basis for reviewing the Contractor’s Applications for Payment.

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

§ 5.1.6 In accordance with AIA Document A201™–2017, as modified by the Owner for the project, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be provided using the AIA G702 and G703 format and computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as modified by the Owner for the project;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 as modified by the Owner for the project; and

.5 Retainage withheld pursuant to Section 5.1.7.

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

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

§ 5.1.6.5 Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

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

Payment for materials and/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 and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment. All material or equipment being invoiced for as stored are subject to physical inspection at the site they are stored. The Contractor shall ensure access. Delays stemming from lack of or slow access will impact the review of Applications for Payment. When stored materials or equipment will be invoiced, written notice to the Architect and Owner shall be made a week prior to submission of the Application for Payment to allow time to determine need and/or schedule a verification. It is the Contractor's sole responsibility to provide all necessary proof of existence and insurance as required in this Agreement prior to the Architect's or Owner's physical verification.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«Five percent (5%) »

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

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

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

«No reduction allowed prior to Final Completion. »

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

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

«As-built drawings and all other closeout documents shall be submitted with all final punch list items completed unless provision has been made by written approval. All closeout documents shall be accepted as accurate by the Architect before any Retainage will be released. »

§ 5.1.8 If Final Completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts payable in accordance with Article 9 of AIA Document A201–2017, as modified by the Owner for the Project.

§ 5.1.9 Except with the Owner's prior written approval or as otherwise provided in in Section 9.3.2 of the AIA Document A201-2017, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. If the Contractor wishes to bill for materials or equipment which cannot be stored on site, the Contractor shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Contractor shall also require, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Contractor as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Contractor from meeting the schedule unless the Owner agrees to such delay in writing in advance of any delay.

§ 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201–2017, as modified by the Owner for the project, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Section 3.5 et seq. and 9.10.2 of AIA Document A201-2017; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 45 days after Owner's Board's vote or other required approval pursuant to applicable policy. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

«Whether time or money, a Change Order will be issued to resolve and settle the final payment and contractor release from daily responsibility. Warranty management and performance remains as required by the contract.»

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest at the rate established by Texas Government Code Chapter 2251.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as modified by the Owner for the project, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution

For any Claim or dispute between the parties, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[«☐»] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[«X☐»] Litigation in a court of competent jurisdiction

[«☐»] Other (*Specify*)

«☐»

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

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017, as amended by the Owner for the Project.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, as amended by the Owner for the project, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

«As described in AIA Document A201-2017, as amended by the Owner for the project. »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended by the Owner for the project.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s Designated representative:

(Name, address, email address, and other information)

The Owner’s Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order in an amount of \$50,000 or more, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. In the event that changes in the scope of the Work are required before the Board’s next regularly scheduled meeting or in order to facilitate and expedite the timely completion of the Work, the Board’s authorized representative shall have authority to approve construction changes that do not exceed \$50,000.00 in increased costs. Any such change shall be confirmed in writing between the Contractor and the Board’s authorized representative and notice of such approved changes shall be given to the Board at its next regularly scheduled meeting. The Board shall act as soon as reasonably possible to avoid unnecessary delays in the construction completion date. Except as expressly authorized by the Owner or the Contract Documents, the Architect does not have the authority to bind the Owner. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 8.3 The Owner’s authorized representative:

«Superintendent of Schools »

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

«TBD »
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§ 8.4 The Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in this Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notices sent to the Owner.

§ 8.7 Other provisions:

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§ 8.7.1 The subject of this Contract is a public school facility which is governed by School Facilities Standards promulgated by the State Board of Education and said project must be constructed in compliance with these Standards. Upon request, Owner, its authorized agent, its Architect, and/or its Engineer shall make available information related to the School Facilities Standards necessary for compliance with said Standards.

§ 8.7.2 The Owner is an organization exempt from Texas taxes. Owner shall not be responsible for sales, consumer, use, and similar taxes on labor, materials, equipment, systems, and other items purchased for the project which Owner would ordinarily be exempt. A tax exemption certificate is available upon request by the Contractor.

§ 8.7.3 All provisions in the Contract Documents that mandate arbitration are expressly deleted and rendered null and void.

§ 8.7.4 Subcontracts, purchase orders and rental agreements entered into by the Contractor shall contain provisions permitting assignment to the Owner upon default by Contractor under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Contractor under this Agreement and for which payment has not already been made to the Contractor. Contractor shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement.

§ 8.7.5 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 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 part hereto regardless of who is responsible for its preparation.

§ 8.7.6 In the event of any suit or action arising out of or in connection with any of the Contract Documents, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.

§ 8.7.7 Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Agreement or the Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

§ 8.7.8 If the building will be used or occupied by the Owner or members of the public, the Contractor shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building, and shall reroute access as necessary to maintain safe access during construction at no additional cost beyond the agreed contract amount.

§ 8.7.9 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is certifying to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Contractor is also representing that it will require all subcontractors to provide workers' compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to the Contractor. The Contractor will provide the certifications to Owner. 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 which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ 8.7.10 The Contractor shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of the existence of workers' compensation coverage for its employees, or, at the Contractor's sole discretion, provide for coverage of the subcontractor's employees under the Contractor's workers' compensation insurance coverage. The Contractor shall maintain records of all required certificates of insurance provided by the subcontractors, and shall forward copies to the Owner and the Architect.

§ 8.7.11 Warranty. The Contractor shall be responsible for the coordination of warranty work, if any during the first year after Substantial Completion of the Entire Work.

§ 8.7.12 No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a waiver of any immunity or a consent to suit.

§ 8.7.13 The Owner's competitive procurement solicitation documents/packet and the response of the Contractor to same are incorporated herein by reference as if copied verbatim. The Contractor agrees to comply with all requirements incorporated or included in the competitive procurement solicitation documents/packet by the Owner

§ 8.7.14 The Contractor shall record the progress of the Project. On a monthly basis, or as otherwise agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress and accomplished, Subcontractors working on the site, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The log shall be available to the Owner and Architect at any time during work hours and shall be presented for discussion at the project progress meetings.

§ 8.7.15 If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Contractor hereby

certifies and verifies that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any (the “Contractor Companies”), boycotts Israel, and the Architect agrees that the 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 refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

§ 8.7.16 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 8.7.17 If Contractor is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov’t Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): “The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.” Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Contractor hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (2) promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of Owner; and (3) on completion of the Agreement, either (a) provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Contractor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

§ 8.7.18 Program Manager shall have, and is hereby granted by Owner, full and complete power, authority, and discretion to act for, and in the name, place, and stead of, Owner in carrying out and discharging the responsibilities and obligations of Program Manager under the Agreement between the Owner and Program Manager; provided, however, that Program Manager shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided in the Agreement between the Owner and the Program Manager or specifically authorized in writing by Owner. In no event shall Program Manager be authorized to execute any documents, agreements, or other instruments on behalf of Owner without written approval by Owner. In no event shall Program Manager have the authority to modify completion dates of the Project Schedule without written approval by Owner. Program Manager shall have the authority to modify interim milestones dates not affecting the completion dates specified in the Agreements between the parties. In no event shall Program Manager have the authority to modify contract value of the Project without written approval by Owner. Program Manager shall have the authority to modify budgets, contingencies, allowances and similar accounting tasks not affecting the contract value specified in the Agreements between the parties. In no event shall Program Manager have the authority to relax or to bind the Owner to codes and standards imposed by the Authorities Having Jurisdiction, unless authorized in writing by the Owner.

§ 8.7.19 The Contractor shall utilize online project management software in the manner described in Exhibit B Project Management Software.

There is a cost associated with this software. The software requires single user licenses, and the Contractor shall consider how many seats of the software and annual renewal premiums fees which are not considered reimbursable and shall be a part of the General Conditions. Cost per seat is \$795 ea with a \$695 for each annual renewal.

§ 8.8 Governing Law and Venue

§ 8.8.1 Section 13.1 of the General Conditions document pertaining to the Project, as modified by the Owner, shall apply to the Agreement, the Contract, and the Contract documents in all respects. No provision of this Agreement is a waiver of any immunity, defense, or a consent to suit.

§ 8.8.2 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 Harris 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 Harris County, Texas.

§ 8.9 Severability

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

§ 8.10 Information and Services Required of the Owner

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

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner for the Project
- .2 Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner for the project
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .5 Drawings

Number	Title	Date
« »		

- .6 Specifications

Section	Title	Date	Pages
« »			

- .7 Addenda, if any:

Number	Date	Pages
« »		

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

- .8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages
« »		

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

- .1** Owner's competitive procurement solicitation documents and Contractor's responses and proposals to same.
- .2** The Project Manual for the Project, including all sections to same, whether issued or created prior to or after the execution of this Agreement.
- .3** Statutory Payment and Performance Bonds.
- .4** Certificates of Insurance required of the Contractor.
- .5** All documents listed or described in Section 1.1.1 of AIA Document A201-2017, as amended by the Owner.
- .6** Scale/Schedule of Prevailing Wages (attached as Exhibit A to the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner for the project) and incorporated herein as if fully set forth.
- .7** Any modifications to this Agreement or to the Contract or any Contract Documents approved by the Parties.
- .8** Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract
- .9** Exhibit B – Project Management Software

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

« »

OWNER (Signature)

« »« »

(Printed name and title)

(Date)

« »

CONTRACTOR (Signature)

« »« »

(Printed name and title)

(Date)

XXXVI. EXHIBIT V - AIA DOCUMENT A201-2017
TO BE ISSUED VIA ADDENDUM

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

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

**RFQ #947-23 – Tomball West High School
A New 3,000 Student High School Campus
17803 Cypress Heights Drive
Cypress, Texas 77433**

THE OWNER:
(Name, legal status and address)

**Tomball Independent School District
310 S. Cherry Street
Tomball, Texas 77375**

THE ARCHITECT:
(Name, legal status and address)

**Huckabee Architects
1700 City Plaza Dr., Suite 125
Spring, Texas 77389**

THE PROGRAM MANAGER:
(Name, legal status and address)

**Lockwood, Andrews, & Newnam, Inc.
2925 Briarpark Drive, Suite 400
Houston, TX 77042-3720**

The Owner may retain Program Manager(s) to carry out some of the functions of the administration of the Owner's construction program. The Contractor, Architect, and Program Manager (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or Program Manager, including the assignment of the Program Manager, may be changed by Owner during the Project.

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| 1 | GENERAL PROVISIONS |
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| 3 | CONTRACTOR |
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| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |

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.

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

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

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- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect or the Owner. All sections of the Project Manual shall be a part of the Contract Documents. The solicitation documents used by the Owner, including advertisement or Requests for bids or Proposals, Instructions to Bidders, other information furnished by the Owner in anticipation of receiving bids or proposals, and Addenda relating to such solicitation documents, except to the extent that the proposal has been modified by the terms of the Contract shall be a part of the Contract Documents. Any reference to any Contract Documents shall mean the document as amended and/or supplemented for this Project.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract") and are as fully a part of the Contract as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the original Contract Documents, the Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.2.1 To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Trustees, unless otherwise delegated. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract. Contractor's signing of the Agreement shall be considered as signing all Contract Documents identified therein.

§ 1.1.2.2 After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Trustees, unless otherwise delegated, and signed by an authorized representative of Owner's Board of Trustees. As a material consideration for the making of the Contract, Modifications to the Contract shall not be construed against the maker of said Modifications.

§ 1.1.2.3 In the event of conflict, the order of precedence of the Contract Documents shall be as listed in the Agreement. Terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions, and the terms and conditions in the General Conditions shall take precedence over all other terms and conditions contained in the other Contract Documents, except for Exhibit A, "Insurance and Bonds," attached to the Agreement, which shall take precedence over the General Conditions. An enumeration of the Contract Documents and their order of precedence, other than a Modification, appear in Article 9 of the AIA A101, as modified by the Owner for the Project

§ 1.1.2.4 Any reference to the Agreement, General Conditions, or any other Contract Document shall mean the document as amended and/or supplemented for this Project.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to

produce, construct, and fully complete the public Work identified by the Contract Documents. The Contract Documents include all Construction Documents, such as Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy, safety, and security standards in 19 TAC Section 61.1040, and any other standards to which the Architect is subject pursuant to applicable law or contract. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials or documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project.

§ 1.1.8 Initial Decision Maker

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

§ 1.1.9 Project Manual

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.10 Project Manual Addenda

Project Manual Addenda are written, or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and Subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

§ 1.1.11 The terms "bids" or "bidding" shall include any kind of competitive purchasing/procurement under Texas Government Code Chapter 2269.

§ 1.1.12 Abbreviations

AIA:	American Institute of Architects
AIEE:	American Institute of Electrical Engineers
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute
AISC:	American Institute of Steel Construction

ANSI:	American National Standards Institute
ASA:	American Standards Association
ASTM:	American Society of Testing Materials
AWSC:	American Welding Society Code
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act
EPA:	Environmental Protection Agency
FS:	Federal Specification
NEC:	National Electrical Code
NIC:	Not in Contract (indicates work not to be done by this Contractor under this Agreement)
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
TAS:	Texas Accessibility Standards
UL:	Underwriters Laboratories, Inc.

§ 1.1.13 Miscellaneous Other Words

§ 1.1.13.1 Calendar Days: The days of the Gregorian calendar. The Contract Time is established in Calendar Days and extensions of time granted for Regular Work Days lost, if any, will be converted to Calendar Days.

§ 1.1.13.2 Holidays: The days officially recognized by the construction industry in this area as a holiday; 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.

§ 1.1.13.3 Regular Work Days: All calendar days except holidays and Sundays. Requests for extensions of time shall be requested on the basis of Regular Work Days

§ 1.1.13.4 Anticipated Adverse Weather Days: An allowance of Regular Work Days established as probable days lost due to weather delays; said allowance to be included in the Contractor's Completion Time.

§ 1.1.13.5 Adverse Weather Days: Regular Work Days when rain, flooding, snow, unusually high winds, excessively wet grounds, or similar circumstances prevent progress on Critical Path portions of the Work. The Contractor will be entitled to an extension of the Contract Time for the net additional time, if any, which results from deducting the amount of Anticipated Adverse Weather Days from the total amount of approved Adverse Weather Days.

§ 1.1.13.5.1 Further, Adverse Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site and is readily apparent and easily demonstrated that it was cause for delay:

1. Precipitation (rain, snow, or ice) in excess of twenty-five one hundredths of an inch (0.25") liquid measure, hereafter referred to as Standard Baseline.
2. Temperatures that do not rise above that required for the day's construction activity, if such temperature requirement is specified or accepted as standard industry practice.
3. Sustained wind in excess of twenty-five (25) m.p.h.
4. "dry-out" or "mud" days resulting from precipitation that occur beyond the standard baseline; only if there is a hindrance to site access or sitework and Contractor has taken all reasonable accommodations to avoid such hindrance; and, at a rate no greater than 1 make-up day for each day or consecutive days of precipitation beyond the Anticipated Adverse Weather Days that total 1.0 inch or more, liquid measure.
5. Adverse weather prevents work on the project for fifty percent (50%) or more of the Contractor's scheduled work day and critical path construction activities were included in the day's schedule, including a weekend day or holiday if Contractor has scheduled construction activity that day.

§ 1.1.13.6 Net Days: Actual Adverse Weather Days experienced to date less Anticipated Adverse Weather Days anticipated to date. Actual Instruction Days experienced to date less Anticipated Instruction Days anticipated to date.

§ 1.1.13.7 Instruction Days: Regular Work Days when the Owner operations prevent progress on Critical Path portions of the Work. The Contractor will be entitled to an extension of the Contract Time for the net additional time, if any, which results from deducting the amount of Anticipated Instruction Days from the total amount of approved Instruction Days.

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

§ 1.1.13.9 The term “Direct Labor Cost” means the actual and verifiable salaries and wages (basic, premium and incentive) paid to personnel, but does not include indirect payroll related costs or fringe benefits (Labor Cost Burden).

§ 1.1.13.10 The term “Labor Cost Burden” means the actual and verifiable cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Labor Cost Burden excludes all forms of general liability policy premiums and deductibles, safety training, tuition cost reimbursement, small tool expense, and union dues. The Owner reserves the right to request evidence of Labor Cost Burden at any time from Contractor and Subcontractors.

§ 1.1.14 The term “Compensable Change” means circumstances involving the performance of Extra Work:

- 1 that are the result of
 - (1) Differing Site Conditions,
 - (2) amendments or additions to Applicable Laws, which amendments or additions are enacted after the execution of the Agreement,
 - (3) a Change requested by Owner in accordance with the conditions of authorization applicable to Compensable Changes set forth in Article 7, below, or
 - (4) other circumstances involving a Change in the Work for which Contractor is given under the Contract Documents a specific and express right to a Change Order to the Contract Price;
- 2 that are not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or violation of an Applicable Law, or by a failure of Contractor or a Subcontractor, of any Tier, to comply with the Contract Documents;
- .3 for which a Change Order is neither prohibited by nor waived under the terms of the Contract Documents; and
- .4 that if performed would require Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such circumstances.

§ 1.1.15 The term “Compensable Delay” means a Delay to the critical path of activities affecting Contractor’s ability to achieve Substantial Completion of the entirety of the Work within the Contract Time:

- 1 that is the result of
 - (a) a Compensable Change,
 - (b) the active negligence of Owner, Architect, a Owner Consultant or a Separate Contractor,
 - (c) a breach by Owner of an obligation under the Contract Documents, or
 - (d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Change Order adjusting the Contract Price;
- 2 that is not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; and
- 3 for which a Change Order to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents.

§ 1.1.16 The term “Excusable Delay” means a Delay, other than a Compensable Delay, to Contractor’s ability to achieve Substantial Completion or Final Completion of the Work within the Contract Time that is: (1) not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractors, of every Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing, neither the bankruptcy, insolvency nor financial inability of Contractor or a Subcontractor, of any Tier, nor any failure by a Subcontractor, of any Tier, to perform any obligation imposed by contract or Applicable Laws shall constitute a ground for Excusable Delay.

§ 1.1.17 The term “Unexcused Delay” means any Delay that is not a Compensable Delay or Excusable Delay or that constitutes a Compensable Delay or Excusable Delay for which Contractor is not entitled to a Change Order to the Contract Time, including, without limitation, the following: (1) Delay caused by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) Delay for which Contractor has failed to provide a timely and complete Notice of Delay or Request for Extension; or (3) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor’s risk or Contractor’s Own Expense.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless the Contractor obtained a decision in writing from the Architect as to what shall govern before the submission of the Contractor’s proposal. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect’s decision shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

§ 1.2.4 Relation of Specifications and Drawings

General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal inconsistencies, then the Contractor shall base the bids and construction on the most expensive combination of quality and quantity of Work indicated. If Drawings and Specifications are not in concurrence regarding quantity or quality, Contractor shall request interpretation from the Architect. For purposes of construction, the Architect shall determine in writing the appropriate Work, after the Contractor brings the inconsistency to the Architect’s attention.

Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

§ 1.2.4.1 Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or fixtures or equipment may affect any particular installation. These shall be ascertained by the Contractor from the Architect and correlated to bring the parts together to a complete whole.

§ 1.2.4.2 All dimensions shall be verified by field measurements and all work laid out to permit pipes, valves, ductwork, lights, panels, other items of construction, to be located as closely as possible to locations shown. All items shall be checked before installation to determine that they can be concealed properly, if appropriate, and that they clear any structural components, supports for other items, and cabinets and equipment or other mechanical, electrical or architectural items having fixed locations.

§ 1.2.4.3 Work shall be laid out to assure ready accessibility to valves, fittings, and other items requiring servicing, adjustment or checking.

§ 1.2.4.4 Actual physical dimensions of specified stock items shall govern over dimensions shown for work to receive stock items. Custom items or modified stock items shall be fabricated to dimensions shown, or to fit into other dimensioned work.

§ 1.2.4.5 If Work is required in a manner which makes it impossible to produce the specified quality of Work, or should errors, omissions, or discrepancies exist in the Contract Documents, the Contractor shall request in writing an interpretation before proceeding with Work. If Contractor fails to make such a written request, no excuse or claim will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and Specifications which should reasonably have been ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

§ 1.2.5 Materials, Equipment and Processes

The mechanical, electrical, and plumbing drawings show the general arrangement and extent of the Work. Exact location and arrangement of the various parts shall be determined with the approval of the Architect after equipment has been selected and as the Work progresses.

§ 1.2.5.1 All Work shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions concerning equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. The Contractor shall be required to submit material data and drawings on all equipment, which may vary from the Drawings and Project Manual, and any interferences must be eliminated before Work proceeds.

§ 1.2.5.2 Where in the Project Manual, Specifications, and Drawings, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contract Documents, equally compatible with the existing installations, and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved in advance by the Architect and Owner; however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials

that deviate from any of the indicated and specified requirements. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project in writing.

§ 1.2.5.3 Diagrammatic indications of piping, ducts, conduit, and other similar items are subject to adjustment to obtain required grading, passage over, under or around obstructions, to avoid exposure to finished areas, or unsightly, obstructing conditions. Contractor shall be responsible for coordination of these adjustments and recommending alternate solutions whenever design details affect construction feasibility, costs, or schedules. All manufactured articles, materials, and equipment shall be incorporated into the Work in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.6 Standards and Requirements

When the Work is governed by reference to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, the current edition as of the date of execution of the Agreement shall apply. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 1.2.7 Errors in Construction Documents

The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions. The Contractor stipulates and agrees that the Owner has no duty to discover any errors, inconsistencies, or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. Owner makes no warranty as to the completeness, adequacy, and accuracy of any Drawings, Plans, Specifications or other Construction Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies, or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Sum due to delays or disruptions to the Work.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership, of the Instruments of Service/Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service or Construction Documents. The Owner holds perpetual right to use all of the Instruments of Service / Construction Documents for this Project. 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 any reserved rights.

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

§ 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 to the individual for which it was intended in person, by registered or certified mail, return receipt requested, by courier service providing proof of delivery, or by electronic transmission (facsimile or email), with electronic confirmation of receipt, if a method for electronic transmission is set forth in the Agreement. For notices delivered by electronic transmission and received after 5:00 p.m. on a day on which the recipient's offices are open, or on a weekend, Holiday, or other day on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next day on which the recipient's offices are open.

§ 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, return receipt requested, 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, including, in the Owner's sole discretion, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Notwithstanding any provision herein to the contrary, if the parties agree to an exchange of electronic data/CAD files, such transfer shall be in accordance with the following requirements: the seals and signatures shall be removed from any Drawings or Project Manual and the following statement substituted: The record copy of this Drawing or Project Manual is on file at the Architect's office. This electronic document is released for the purposes of reference, coordination and/or facility management under the authority of Texas Registration Number Architect License No. (insert License #). Any modification of this Drawing or Project Manual shall be in compliance with the Texas Board of Architectural Examiner's rules.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in Section 1.7, above, or any use of Contract Documents or any other information or documentation in digital form inconsistent with those protocols set forth in Section 1.7, above, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Parties to Consult

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

§ 1.9.2 Contractor acknowledges that the Contract Sum reflects Owner's absolute budgetary limit for the Costs of the Work. Should the Contractor become aware of circumstances with respect to the Work that, if not addressed or remedied would lead to a cost overrun, it shall immediately notify Owner and Architect of the existence of such circumstances and its recommendation for addressing the circumstances, including any possible elimination or offset of the cost overrun. If at any time circumstances arise that might result in the Contract Sum being exceeded, the Owner, Contractor and Architect shall consult and revise the Drawings and Project Manual (including, but not limited to consideration of substitutions of materials) in such fashion as to cause the Work as revised to be accomplished for the Contract Sum; provided that no such revision shall result in a material diminishment of the square footage of the instructional facilities.

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. All parties understand that only the Board of Trustees 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, including, but not limited to, a Change Order or Construction Change Directive modifying the Contract Sum or an extension to the date of Substantial or Final Completion. The Board of Trustees may designate in writing one or more persons to represent the Owner and act on its behalf for such matters, as well as day-to-day operations under the Contract, in accordance with the current policy of the Board of Trustees; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by

the Owner and shall have no implied authority. Neither Architect nor Contractor may rely upon the direction of an employee of Owner who has not been designated as set forth herein, and Owner shall not be responsible, financially or otherwise, for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner with respect to matters requiring Owner's approval or authorization. The Owner has contracted with the Architect who will carry out the functions of administration of the Project and the initial arbiter of Claims as identified in Section 15.2.

§ 2.1.2 The presence of the Owner, the Owner's representative(s) or Architect at the Work site does not imply acceptance or approval of the Work.

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

§ 2.2 Intentionally deleted.

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which the Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

§ 2.3.4 If requested in writing to do so by the Contractor prior to the start of the Work, the Owner may, at the Owner's sole discretion, furnish surveys known to the Owner describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes, or pipelines, or the presence or absence of easements. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper diligence and take appropriate precautions relating to the safe performance of the Work. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH

REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request. Absent such timely request by Contractor, any Claim based upon lack of such information or services shall be waived. The Owner shall not be required to expend any funds to obtain such information unless Owner agrees to do so.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one .pdf copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The cost of reproductions will be borne by the Contractor.

§ 2.4 Owner's Right to Stop the Work

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

§ 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 three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Owner 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 actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants' additional services and expenses 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 within thirty (30) days after receipt of written notice from the Owner therefor. 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.

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. If the Work is performed under a Construction Manager at Risk delivery method, the term "Contractor" shall include the Construction Manager or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship. Workmanship shall be of a quality to produce first class results. This shall mean that all material shall be installed in a true and straight alignment, level and plumb, patterns shall be uniform, and jointing of materials shall be flush and level unless otherwise directed in writing by the Architect. All labor shall be performed in the best manner by laborers, workers, and mechanics skilled in their respective trades.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, activities

of the Owner (or Owner's Program Manager, if applicable), or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 By submission of a proposal, the Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work: (1) that the Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents; (2) that the Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to timely complete the Work and perform its obligations hereunder and that the Contractor is sufficiently experienced and competent to do so; (3) that the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi- public authorities having jurisdiction over the Contractor, the Work, or the site of the Project; and (4) that the execution of the Contract and its performance thereof are within the Contractor's duly-authorized powers.

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

§ 3.1.6 Contractor, its Subcontractors, Sub-subcontractors, suppliers, and other vendors shall bear responsibility for compliance with all applicable state and federal laws, regulations, guidelines, and ordinances applicable to the Work, including but not limited to, laws concerned with labor, equal employment opportunity, safety, minimum wages, and prevailing wage rates. Contractor further recognizes that the Owner and Architect do not owe the Contractor or any Subcontractor, Sub-subcontractor, supplier, or other vendor any duty to supervise or direct its work so as to protect such party from the consequences of its own conduct. Without limiting the foregoing, the Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.1.7 The Contractor shall disclose the existence and extent of any financial interests, whether direct or indirect, such Contractor may have in any Subcontractor, Sub-subcontractor, supplier, and other vendor which the Contractor may propose for the Project.

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

§ 3.2 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. Contractor also represents by its execution of the Contract, that the Contractor has thoroughly reviewed all of the Contract Documents and that based on such review and to the best knowledge of Contractor as a contractor, not as a design professional, that said Contract Documents are sufficient to enable the Contractor to determine the Contract Sum and that the Contract Documents are sufficient to enable it to perform the Work described in the Contract Documents, and otherwise to fulfill all its obligations hereunder in accordance with the terms of the Contract. The Contractor further acknowledges and declares that it has visited and examined the site (but only as to visible surface conditions or conditions ascertainable from the results of any subsurface tests required or provided in connection with this Project, or other reports and documents available to the Contractor) and reasonably examined the physical, legal and other conditions affecting the Work including, without limitation, all soil, subsurface, water, survey and engineering reports and studies delivered to or obtained by Contractor and the conditions described in this Section 3.2.1. In connection therewith, Contractor, by execution of the Contract will be representing and warranting to Owner that it has, by careful examination, satisfied

itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic and weather conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. In arriving at the Contract Sum, the Contractor has, as an experienced and prudent manager and contractor, exercised its reasonable judgment and expertise to include the impact of such circumstances upon the Contract Sum.

- .1 Claims for additional compensation or time because of the failure of the Contractor to familiarize itself with visible surface conditions at the site or other conditions under which the Work is to be performed will not be allowed.
- .2 The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project Site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum, Guaranteed Maximum Price, if applicable, or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.
- .3 The Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations. All contracts with subcontractors and suppliers shall be in writing, and shall reflect the terms of this Contract which directly or indirectly affect subcontractors or suppliers, including Owner's right to withhold payment, retainage requirements, and Owner's rights and liability on termination of this Contract. The Contractor shall require compliance with the terms and provisions of the Contract Documents applicable to them, including, without limitation, the requirement for subcontractors to comply with the prevailing wage rates established in the Contract, to maintain worker's compensation coverage on employees, and to provide certification of such coverage to Contractor.
- .4 This project has been planned around a master planned campus with three (3) public roads bisecting from different directions. There are also infrastructure projects and other school construction projects all of which will be in varying stages of completion while this project begins. It is incumbent upon the Contractor to work with other Owner Contractors performing work along shared corridors. Should a dispute arise between two Contractor's, the Contractor shall notify the Owner who will mediate the dispute in a method which best resolves the overall Program schedule and work being performed on this campus.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor. In addition, as part of the Contractor's preconstruction services, in reviewing the Contract Documents, the Contractor shall endeavor to detect any errors, omissions, or inconsistencies in the design and other documents which affect the performance or constructability of the Work. The Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation or initiating a Request for Information (RFI). The Contractor shall not ask the Architect for observation of Work prior to the Contractor's field superintendent's personal inspection of the Work. If, in the opinion of the Architect or the Owner, the Contractor does not make a reasonable effort to comply with the above requirements or such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation, and this causes the Architect or its Consultants to expend additional time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's and its consultants' additional services and

expenses made necessary by the Contractor's failure and the Owner shall be entitled to deduct such amounts from the Contract Sum. The Architect will give the Contractor prior notice of intent to bill for additional services and expenses before additional services are performed or additional expenses are incurred.

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

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

§ 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 notify the Owner prior to incurring such additional cost or expending such additional time, or if Contractor cannot reasonably provide notice prior to incurring costs or expending additional time, then as soon thereafter as reasonably possible, but not later than 10 Calendar Days, and may 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 including any extra efforts as required to bring the project back into alignment with the original schedule. 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 and limitations of the Contractor's ability to satisfactorily perform the Work or to honor an applicable warranty, and limitations of or interference with the Owner's intended use, caused by products or systems specified except when: (1) such errors, inconsistencies, omissions, differences, nonconformities, or limitations are the fault of Contractor, in whole or in part, (2) the Contractor failed to discover such errors, inconsistencies, omissions, differences, or nonconformities due to its failure to properly perform the obligations of Section 3.2.2 or 3.2.3, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, nonconformities, or limitations and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, nonconformities, or limitations as part of Contractor's performance of its obligations under the Contract Documents, including the performance of Contractor's preconstruction services.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, prior to performing any Work, Contractor shall, if applicable, independently determine the location of all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, Contractor shall, if applicable, review the appropriate AHERA and hazardous materials surveys for the particular site(s) involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform the Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection

Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

§ 3.2.6 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 an applicable warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for its position.

§ 3.2.7 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including: (1) The location, condition, layout, drainage and nature of the Project site and surrounding areas; (2) Generally prevailing climatic conditions; (3) Anticipated labor supply and costs; (4) Availability and cost of materials, tools and equipment; and (5) Other similar issues.

§ 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 written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. Contractor shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible for any resulting loss or damage to the extent that the acceptance of Contractor's proposed alternative means, methods, techniques, sequences, or procedures would have avoided such loss or damage.

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

§ 3.3.2.1 Contractor shall, before any duties are performed on Owner's property where students are present, and at least annually thereafter, comply with all requirements relating to criminal history information required by Texas Education Code Chapter 22, unless Owner, in its sole discretion, determines in writing that an exception applies under Section 22.08341(c) of the Texas Education Code, subject to Contractor's and all Subcontractors' compliance with Section 22.08341(i) of the Texas Education Code. Before beginning any Work on the Project, Contractor will provide written certification and all information required by Owner to the Owner that Contractor has complied with the statutory requirements as of that date. The form of certification by the Contractor shall be supplied by the Owner and must be supplemented by the Contractor as required by law, or as requested by Owner. Upon request by Owner, Contractor will provide, in writing, updated certifications and the names and any other requested information regarding individuals to whom Chapter 22 applies, so that the Owner may obtain criminal history record information on such individuals. Contractor shall assume all expenses associated with obtaining criminal history record information. It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

§ 3.3.2.1.1 Subcontractors or any Subcontractor entity, as defined by Texas Education Code Chapter 22, shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code Chapter 22), and by Texas law, to comply with all requirements relating to criminal history record information on their employees, agents, or applicants, to give required certifications and provide all information requested by Owner to Owner and the contracting entities, and to obtain required certifications/compliance from the subcontracting entity's subcontractors.

§ 3.3.2.1.2 Contractor will not assign any “covered employees” with a “disqualifying criminal history”, as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If Owner, in its sole discretion, objects to the assignment of a covered employee for any reason, including, but not limited to, on the basis of the covered employee’s criminal history record information and/or insufficient qualifications, lack of experience, and the like, based on information gathered by Owner through the procurement and/or contracting processes, Contractor/Subcontractor agrees to discontinue using that covered employee to provide services on Owner’s Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor or any Subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 3.3.2.1.3 For the purposes of this Section 3.3.2.1, “covered employees” means employees, agents or Subcontractors of Contractor or a Subcontractor who has or will have continuing duties related to the services to be performed on Owner’s Project and has or will have direct contact with Owner’s students. “Disqualifying criminal history” means: (1) For employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.08341(d), that is: conviction during the preceding 30 years (if at the time of the offense, the victim was under 18 or was enrolled in a public school) of: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b); (2) For employees of all other contracting or subcontracting entities: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: (a) conviction of a felony offense under Title 5, Texas Penal Code if at the time of the offense, the victim was under 18; (b) conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) conviction of an offense under federal law or the laws of another state that is equivalent to (a) or (b).. Owner shall be solely responsible for making the final determination of what constitutes direct contact with Owner’s students and what constitutes a disqualifying criminal history.

§ 3.3.2.2 Contractor shall enforce the Owner’s alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor’s employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor’s own forces or the forces of Contractor’s Subcontractors, while on Owner’s property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with Owner’s students or employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner’s students or employees. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor’s and Subcontractor’s direct or indirect supervision and Owner’s students or employees or the general public. Sexual harassment is strictly forbidden. Any employee of the Contractor or a Subcontractor who is found to have engaged in any such conduct shall be subject to appropriate disciplinary action by the Contractor or Subcontractor, including immediate removal from the job site.

§ 3.3.2.3 All areas of campus, other than the defined construction area, shall be off limits to Contractor’s forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress, including wearing shirts at all times, and “badging” of Contractor’s employees, Subcontractors, and all other persons carrying out the Work on the job site for identification. Contractor shall ensure that all construction workers, whether Contractor’s own forces or the forces of Contractor’s Subcontractors, wear identification tags on the front of their persons during all times that they are on Owner’s property. Such identification tags shall contain a current photograph and the worker’s name in a typeface large enough to be seen from a reasonable distance. Contractor shall furnish to Owner (and update, as appropriate) photo identification of all workers and employees.

§ 3.3.2.4 Contractor shall require all construction workers, whether Contractor’s own forces or the forces of Contractor’s Subcontractors, to park their personal motor vehicles on Owner’s property only in the parking places

designated by the Owner's campus principal or other facility administrator. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 3.3.2.5 Contractor shall follow, and shall require all employees, agents and subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 3.3.2.6 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's Subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

§ 3.3.2.7 Any individual found by Owner to have violated the standards of conduct or restrictions set forth in Section 3.3.2 is subject to immediate removal from the job site and, in Owner's sole discretion, permanent removal from the Project or all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's Subcontractor's forces, or one serious infraction, shall constitute a material breach of the Contract justifying the immediate termination by Owner pursuant to Article 14. THE CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FROM AND AGAINST CONTRACTOR'S AND ANY SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH THE STANDARDS OF CONDUCT OR RESTRICTIONS SET FORTH IN SECTION 3.3.2, NON-COMPLIANCE WITH CRIMINAL LAW, AND NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces, and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Copies of inspection reports, photographs or other related records shall be made available to the Owner for review if requested. Reports and documentation shall be formatted and developed in a logical format indicating dates, time of day, findings and the person performing the inspection.

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

§ 3.3.5 The Contractor has the responsibility to ensure that all materials suppliers and Subcontractors, Sub-subcontractors, suppliers, and their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall properly and efficiently coordinate the timing, scheduling, and routing of its Work with that of all trades, Subcontractors, and others on the Project including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under the Agreement or other Contract Documents. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.3.6 Contractor acknowledges that the Work may be performed in connection with a facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the facility on which the Work is to be

performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. When Work occurs in existing facilities, Contractor understands and accepts the cost and schedule impacts associated with work in existing facilities and the potential delays and disruptions to the progress of the Work and has considered such delays and disruptions in the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other Contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury. Contractor shall not request access to the Project, or request the presence of the Owner or presence of Owner's Consultants during non-working times unless the Contractor has demonstrated full-time, fully staffed performance of the Work during Regular Work Days. Owner shall not be obligated to comply with properly submitted requests.

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

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

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

§ 3.4 Labor and Materials

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

§ 3.4.1.1 The Contractor and any Subcontractor or Sub-subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008, any individual the Contractor, Subcontractor, or Sub-subcontractor directly retains and compensates for services performed in connection with the Contract. Any Contractor, Subcontractor, or Sub-subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

§ 3.4.1.2 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and upon any Subcontractor and Sub-Subcontractor under the Contractor, to pay all laborers, workers, and mechanics employed or utilized by them in the execution of the Contract not less than the prevailing rates of per diem wages for work of a similar character in the locality at the time of construction.

§ 3.4.1.3 In accordance therewith Texas Government Code Section 2258 et seq.; Texas Labor Code Section 62.051 et seq, the Owner has established a scale of prevailing wages which is incorporated in the Contract Documents, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Wages listed are minimum rates only, and payment greater than the prevailing wage is not prohibited. No claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rates provided herein. If no schedule of prevailing wage rates is included in the Contract Documents, then the parties shall, at a minimum, use the wage rates determined by the U.S. Department of Labor for projects located in the County in which the Project is located in accordance with the Davis-Bacon Act, 40 USC3141-3148, which can be accessed on the internet at <https://sam.gov/content/wage-determinations>, or the wage rates determined by any local contractor association, whichever is higher..

§ 3.4.1.4 The Contractor and each Subcontractor and Sub-Subcontractor shall keep a record showing the name and occupation of each worker employed by the Contractor, Subcontractor, or Sub-subcontractor in the construction of the Work and the actual per diem wages paid to each worker. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors. These records shall be maintained and made accessible for no less than three (3) years following the date of Final Completion.

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

§ 3.4.1.6 In the event of a complaint of a breach of the requirements in Sections 3.1.6 or 3.4.1, et seq, 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 or Sub-Subcontractor.

§ 3.4.1.7 In the event of a strike or stoppage of Work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors or Sub-subcontractors, Owner may, at its option and without any notice required by the Contract, terminate the Contract for default unless the Contractor remedies the strike of Work or Work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

§ 3.4.1.8 The Contractor shall require all Subcontractors and Sub-Subcontractors to comply with the provisions of this Section 3.4.1 and its subparts.

§ 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 prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Any such substitution request shall be made to the Architect within fifteen (15) days after execution of the Contract.

- .1** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when, in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests in terms of cost, time, or other considerations.
- .2** The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the Contract Time and the construction schedule; and (v) an affidavit stating the (a) proposed

substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations and will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner in sufficient time to allow the Architect and the Owner no less than twenty-one (21) Business Days for review, unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information as stated herein.

- .3 Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly qualified by training and experience and skilled in tasks assigned to them. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall furnish Owner, on request, resumes of the Contractor's key personnel involved in the day-to-day Work on the Project, as well as a list of all engineers, consultants, subcontractors and suppliers involved in construction. At the written request of the Owner or Architect, the Contractor shall not use in the performance of the Work any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, insubordinate, in violation of any provision in the Contract Documents, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times for the proper coordination and performance of the Work in the time periods required by the Contract. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.4.4 Identification of Employees. Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from eight feet away if requested to do so.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that the Work will be performed and completed in a good and workmanlike manner, continuously and diligently in accordance with the Contract Documents, all applicable building codes, and generally accepted standards of engineering and construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. 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 by parties other than Contractor, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation by parties other than the Contractor, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy of the portion of the Project at issue. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work or designated portion thereof within the Project, and each such individual warranty shall run from the date of Substantial Completion of the entire Work (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Contractor's warranties herein shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which

is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or designated portion thereof or, if latent defect, within one (1) year after discovery thereof by Owner. 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 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all third-party warranties relating to materials, equipment, machinery, components, and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such third-party warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of any such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor's warranties shall in no way limit or abridge the warranties of the manufacturers and suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with Subcontractors and Sub-subcontractors and other providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.3 The warranty(ies) provided in Section 3.5 and its subparts, including but not limited to Section 3.5.1, shall be interpreted to require Contractor to address failure, errors, omissions, defects, deviations, or other nonconformities of materials, products, or workmanship, defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner or discovered by the Owner within a period of one (1) year after Substantial Completion of the entire Work or, if latent defect, within one (1) year after discovery thereof by Owner. Upon written notice from the Owner of any defects covered by warranty, the Contractor shall promptly remedy any such defects. If Contractor does not respond to Owner's written notice, either by beginning corrective work or notifying Owner in writing stating when work will begin, within ten (10) days of receipt of the notice or such shorter time as required in the Contract Documents, the Owner may take measures to correct the defects and Contractor will be obligated to reimburse the Owner's costs. Any measures taken by Owner to correct defects due to Contractor's failure to timely respond to Owner's written notice shall not operate to void or otherwise alter any warranties issued by, for, or through the Contractor. If notice of defects covered by warranty is given in writing to the Contractor on a timely basis, the obligation to provide the warranty work will extend beyond the applicable warranty period until the warranty defect is remedied and accepted by the Owner. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to Owner. The Owner will determine and assign the warranty priority as follows:

§ 3.5.3.1 Priority 1 - A complete shutdown situation. Owner is unable to operate. Safety or loss of building contents anticipated.. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 8-hours' notice for warranty notice for the following:

1. Cooler and freezer equipment;
2. Primary Electrical Service
3. Chiller and pumps;
4. Boiler and pump;
5. Lift station;
6. Generator;
7. Elevator;
8. Roof leaks
9. Fire alarm and fire sprinkler malfunction

§ 3.5.3.2 Priority 2 - A major component of Owner ability to operate is affected. Some aspects of the operation can continue but issue is a major problem. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 24-hours' notice.

§ 3.5.3.3 Priority 3 – Owner operation is unaffected, but the issue is affecting efficient operation by one or more people. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 5-working days' notice.

§ 3.5.3.4 Priority 4 – The issue is an inconvenience or annoying but there are clear workarounds or alternates. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 10-working days' notice.

§ 3.5.4 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.1, 3.5.2, and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable.

§ 3.5.5 Except when a longer warranty time is called for in the Contract Documents or is otherwise provided by law, the General Warranty shall be for twelve (12) months from the date of Substantial Completion of the entire Work and shall be in form and content otherwise satisfactory to the Owner. Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, date(s) upon which the one-year warranty will expire, and date(s) of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one-year warranty period. Prior to termination of the one year warranty period, Contractor shall accompany the Owner and Architect on re-inspection of the Work/building and be responsible for correcting any deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. Additionally, for a period beginning at Substantial Completion of any phase of the Work and extending twelve (12) months beyond Final Completion of any phase of the Work, upon request of the Owner, the Contractor shall, not less than once a month, attend a meeting with the Owner to review the facility operations and performance to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner. Any warranty work requiring a return to repair three (3) times may, at the Owner's discretion, require replacement of the equipment or defective material. Any warranty work completed within the final month of construction warranty phase shall extend for a minimum of 45 days beyond the date the work was completed. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection are corrected.

§ 3.5.6 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

§ 3.5.7 In the event an item under warranty fails, the Contractor shall extend the original warranty period by a length of time equal to the elapsed time which occurs from the notification in writing by the Owner or a warranty claim until acknowledgement by the Owner that the claim has been resolved.

§ 3.5.8 The warranties of Contractor in this Section 3.5 and its subparts shall in no way limit or abridge the warranties of the suppliers or manufacturers of equipment or systems which are to comprise a portion of the Work, and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall not engage in any act or conduct, whether by commission or omission that results in the termination or expiration of such third party warranties or which otherwise operates to prejudice the rights of Owner under such warranties.

§ 3.5.9 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of: (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or (3) such further reasonable proof as is required by the Architect. Contractor shall also

certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall complete all applicable certifications required by 19 Texas Administrative Code Section 61.1036-1040.

§ 3.6 Taxes

Contractor shall pay all applicable local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Owner is an exempt entity under the tax laws of the State of Texas, and Contractor shall not include in the Contract Sum or any Modification any amount for any taxes from which the Owner is exempt by virtue of its status as a governmental entity and/or as a Texas independent school district. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sale, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from its suppliers. Failure of Contractor or any Subcontractor or Sub-subcontractor to obtain Certificates of Resale from their suppliers shall make the Contractor, Subcontractor, or Sub-subcontractor responsible for absorbing the tax, without compensation from Owner. CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 After the Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, the Architect shall notify Contractor that Contractor may make and submit the applications for the building permit. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use; occupancy, permits and licenses, pay all charges, deposits and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to the Architect upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of the Work unless otherwise provided by the Contract Documents.

§ 3.7.1.1 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall immediately inform the Architect when the Owner's participation is required, and the Architect will notify the Owner. Connections for temporary and permanent utilities, utility district/company inspections, tap charges, water meter charges, and any other similar fees assessed by jurisdictional authorities having control over the Project, as well as payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the direct responsibility of the Contractor, without reimbursement from Owner, unless otherwise agreed in writing. If the Work is new construction, then payment for temporary and permanent utility services shall be the direct responsibility of the Contractor, without reimbursement from Owner, until Substantial Completion.

§ 3.7.1.2 After consultation with the Owner, the Contractor shall obtain all permits and approvals for itself and the Owner, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Also after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor shall coordinate processing all forms and fees with the Owner. Contractor's obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction site. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable

expenses shall not include any fines or penalties assessed against the Contractor, Contractor's Subcontractors or Sub-subcontractors, the Project, or the Owner

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any notices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume all responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and within forty-eight (48) hours after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend to the Owner that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. The Owner will then consider the facts and the reports of the Architect and the Owner will make the final determination of action. If the Contractor disputes the Owner's determination, the Contractor may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct. The inclusion of any Allowance or Contingency is solely for the benefit of the Owner. Expenditure of any Allowance or Contingency may only be made with prior written approval of the Owner and according to the procedures of Article 7. Owner's authorized representative may approve any expenditure from Allowances without further Board approval. If the Allowances or Contingency are not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating Final Payment.

§ 3.8.2 Calculation of costs or credits for Allowances shall be as described in article 7.1.4.

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

§ 3.8.4 When performing Work under Allowances, Contractor shall solicit and receive not less than three written proposals, unless the requirement to obtain proposals is waived by the Owner in advance, and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project.

§ 3.9.2 Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within the number of days required by the Agreement.

§ 3.9.3 Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to the Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under General Conditions for such day.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, but in no case prior to the first application for payment, shall submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall be transmitted in the form of Microsoft Project in the native file format. 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 and Final Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) predecessors and successors; (5) phases; (6) baseline start and stop dates; (7) actual start and stop dates; (8) current start and stop dates; (9) delays; (10) critical path; (11) submittals; (12) extensions of the Contract Time authorized by Change Orders, (13) anticipated Adverse Weather Days, (14) Anticipated Instructional Days, and (15) Owner activities. 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 and, upon such revision, shall be submitted to Architect and Owner for their review and approval. In no case will the schedule be updated less frequently than each application for payment. The Contractor's schedule may be considered when evaluating a request for additional time.

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's and Owner's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner 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. The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Architect. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project site, or at such other time and frequency as are acceptable to the Owner.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the project schedule.

§ 3.10.7 In addition to the requirements of the Contract Documents, the Contractor's submittal schedule shall include submittals required for Substantial and Final Completion, as described by the Contract Documents, including but not limited to (1) individual specification section-required warranties, (2) certificates, (3) statements, (4) third-party tests.

§ 3.10.8 The Owner's need for delivery of completed Work, or portions thereof, is largely controlled by the necessities of the school calendar and operations of school programs within the calendar year. Those needs are reflected in scheduled completion dates and milestone dates set out in the Contract Documents. The Contractor shall perform the Work in such a way as to not interfere with school operations and the importance of meeting milestones and completion dates is not exclusive.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project site, one record copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, including concealed mechanical, electrical and plumbing items inside of the facility and underground utilities at the site, and one record copy of the approved Shop Drawings, field test records, inspection certificates or records, manufacturers' certificates, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner at all times. At the completion of the Project,

all such documents and records shall be delivered to the Architect, with all changes made during construction, in an editable CAD format agreed to at the beginning of the Project along with (3) full sets of hard copy drawings and one digital copy in PDF format, for submittal to the Owner upon completion of the Work as a record of the Work as constructed, and shall be signed by the Contractor certifying to Owner thereby that they show complete and "as-built" conditions, stating sizes, kinds of materials, vital piping, conduit locations, and similar matters. These documents are to be considered part of the Work beyond the General Conditions. Other than Project identification, the documents shall not bear any professional seal or information or any reference to those firms providing professional services to the Owner, except for historical or reference purposes. This shall be completed and up to date within (30) working days from Substantial Completion and shall be a condition precedent to Final Payment.

§ 3.11.2 Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents, within five (5) working days of request by Owner, Architect, or their respective agents.

§ 3.11.3 In addition to any other requirement in the Contract Documents and prior to installation, at Owner's or Architect's request, Contractor shall furnish or cause a Subcontractor or Sub-subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.4.1 Submittals shall be submitted at the earliest possible time in order to expedite delivery of critical or long lead time items. For more complex systems and equipment (such as structural steel; doors, windows and hardware; casework; mechanical, electrical, and plumbing systems and equipment; food service equipment; sound systems and the like), the Contractor shall schedule at least 10 business days for the Architect or his Consultants' review and submittals shall be sequenced logically in accordance with the schedule, required fabrication and installation time. For submittals delivered by electronic transmission and received after 5:00 p.m. on a day on which the recipient's offices are open, or on a weekend, Holiday, or other day on which the recipient's offices are closed, submittals shall be deemed to have been duly served on the next day on which the recipient's offices are open.

§ 3.12.4.2 The Contractor shall be prepared to submit color Samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) days of the award of Subcontract(s). All color Samples required for the Work shall be received by the Architect no later than sixty (60) days of the date of the approval of the Contract Sum. Once samples of all key items are received, the Architect will finalize color selections.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect and Owner, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an

approved submittal schedule, as required under the Contract Documents. At a minimum, Contractor shall submit all submittals with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. If, in the opinion of the Architect or Owner, the Shop Drawings are (a) incomplete, (b) indicate an inadequate understanding of the Work covered by the Shop Drawings, or (c) indicate a lack of study and review by the Contractor prior to submittal to the Architect, the Shop Drawings will be returned, unchecked, to the Contractor for correction of these deficiencies and subsequent resubmittal. The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's or Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and Owner of such deviation at the time of submittal and (1) the Architect has given written approval of the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's or Owner's approval thereof except for any such errors or omissions which are within the Architect's statutory or contractual design responsibility..

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law; however, the Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawings are prepared and, if required by the Architect or applicable law, by a licensed architect or engineer.

§ 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 cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.12.10.3 A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this section, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.11 The Contractor shall provide composite drawings within four (4) weeks of corresponding submittals approval showing how all piping, ductwork, lights, conduit and 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 1/4" per foot minimum scale and shall include invert elevations, elevation views and sections required to meet the intended purpose. Trades required to participate include, but are not necessarily limited to structural, mechanical, plumbing, fire sprinkler, electrical, data and special systems.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be responsible for daily dust control without any additional expense. These costs shall be considered part of General Conditions.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

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

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area and buildings adjacent to the site or the Work. Prior to the start of any Work which may impact or otherwise affect beneficial use or occupancy of an existing facility, the Contractor shall provide a work plan for such Work that identifies and controls any interruption for approval by the Owner. Work in this situation shall not proceed until an agreed plan of Work is approved in writing by the Owner.

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

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly; provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All

areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Structural members shall not be cut and air duct shapes, piping sizes and related system designed elements shall not be changed or modified except with written permission of the Architect. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 After installation of the Work, Contractor shall carefully fit around, close up, repair, patch and paint such Work to match adjoining surfaces by use of proper tools and new materials using workers skilled in the required trades. All patching must include replacement or repair of any fire rated assembly to its full rating as required by current codes and standards at the point of Work or as may be required by the building official.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall, not less than one time each week, clean up by removing rubbish, including old and surplus materials, to include dirt, debris, or trash. At no time shall trash, dirt or other debris be allowed to remain in any wall cavity, ceiling plenum, crawl space or concealed space. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. At completion of the Work, the Contractor shall remove all waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way as a result of such activities, the Contractor or any of his Subcontractors or Sub-subcontractors shall clean and restore such surfaces to their original condition.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, at its discretion, may perform the clean-up and withhold costs incurred from funds due to Contractor or, if the costs incurred are in excess of the funds due to the Contractor, may require the Contractor to reimburse the Owner for the costs incurred.

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 Prior to Final Completion, in addition to any additional final cleaning work specified in the Contract Documents (including the Specifications), Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills

and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect, and their designated representatives, with access to the Work in preparation and progress wherever located. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees with respect to the Contract or the Work. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, WAIVE AND RELEASE ANY CLAIMS AGAINST THE OWNER AND ARCHITECT WITH RESPECT THERETO, AND INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM ANY LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT 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 ARCHITECT. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless notice of such infringement is promptly furnished to the Owner and Architect in writing.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, AND CONSULTANTS, ARCHITECT, ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF), INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ANY ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR ANY OTHER PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR, AND ANY COSTS AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE POST-JUDGMENT INTEREST RATE PROVIDED TO BE PAID UNDER THE LAWS OF THE STATE OF TEXAS.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, A SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3

THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 ET SEQ.

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S OR SUB-SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN PART BY AN ACT OR OMISSION OF OWNER OR ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.5 THE OWNER MAY CAUSE ANY SEPARATE CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S SEPARATE CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

§ 3.18.6 THE CONTRACTOR AGREES TO WAIVE ANY AND ALL CLAIMS IT MAY HAVE AGAINST THE OWNER, CONNECTED WITH, RESULTING FROM, OR ARISING OUT OF, CLAIMS AND SUITS COVERED BY THE INDEMNIFICATION AGREEMENT CONTAINED HEREIN AND AGREES THAT ANY INSURANCE POLICY SHALL PROVIDE FOR THE WAIVER OF SUBROGATION RIGHTS AGAINST THE OWNER.

§ 3.18.7 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 11.1 of these General Conditions.

§ 3.18.8 The provisions of Section 3.18 in its entirety, including all of its subparts, shall survive the completion, termination, or expiration of 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 Section 3.18 and its subparts.

§ 3.19 Antitrust Violation

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

§ 3.20 Record Drawings

§ 3.20.1 At the completion of the Project, the Contractor shall submit complete "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items inside of the facility and underground utilities at the site. The drawings shall be submitted in an editable native file CAD format agreed to at

the beginning of the project along with (1) full set of hard copy drawings and one digital copy in PDF format. All as-built drawings shall be computer drafted in CAD. Hand drawn corrections are not considered As-Built drawings. These documents are to be considered part of the Work beyond the General Conditions. The documents shall not bear any professional seal or information other than project identification. This shall be completed and up to date within (30) working days from Substantial Completion. Refer to 5.1.7.3 of the Agreement regarding delivery of As-Built drawings and retainage release.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 The Owner shall notify the Contractor when duties, responsibilities, and limitations of authority of the Architect have been modified.

§ 4.1.3 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect or its authorized representative will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues a recommendation that the Final Payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2.. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or expressly authorized by the Owner in writing.

§ 4.2.2 Architect or its authorized representative shall visit the site at least twice per week (or more per week when deemed necessary by the Owner or when necessary to protect Owner's interests) and at other intervals appropriate to the stage of construction, to inspect the progress, quantity and quality of the Work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents and on time. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or its authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or its authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall provide notice and shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on- site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under the Contract. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not

have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized by the Owner or Architect, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors, Sub-subcontractors, and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Notwithstanding the foregoing, Owner reserves the right to communicate directly with the Contractor and Subcontractors.

§ 4.2.5 As further provided in the Contract Documents, based on the Architect's evaluations of the Work progress and quality of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts, which shall be further subject to the Owner's review, modification, approval, or rejection.

§ 4.2.6 The Architect and Owner each has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect and/or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. Testing or inspections required by this section shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, Sub-subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or Construction Documents or nonconformance with the Contract Documents they may respectively discover (or reasonably should have discovered using ordinary diligence) and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect. If Architect or Contractor fails to disclose, in writing, any known defects in the Project or Construction Documents it discovers or reasonably should discover using ordinary diligence, the non-disclosing party (Architect and/or Contractor) shall be liable for the consequences of such defects resulting from the failure to disclose. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. 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 as to cause no delay in the Work or in the activities of the Owner, Contractor, or Separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is conducted for the general purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and/or omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

§ 4.2.8 The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents, accompanied by all supporting documentation. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage; or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect will conduct inspections and, in consultation with the Owner, determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10. In the event Architect is required to perform more than two inspection(s) to determine the date or dates of Substantial Completion or Final Completion due to Contractor's failure to meet the conditions for such completion, Contractor shall be responsible for paying or reimbursing Owner for the cost of any Additional Services charged by Architect or Consultants under the agreement between Owner and Architect.

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

§ 4.2.11 The Architect will interpret and make recommendations on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor, which shall be copied to the other.. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Owner will make the final determination of all matters concerning performance after consultation with the Architect.

§ 4.2.12 Interpretations or recommendations 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 recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect shall be final if (a) they are consistent with the intent expressed in the Contract Documents, and (b) the Owner gives its consent.

§ 4.2.14 Contractor is allowed a reasonable number of requests for information that are initiated by Contractor and if Contractor exceeds that reasonable amount, as determined by the Architect, in its sole discretion, Contractor shall pay the Architect's fee for review of any additional requests for information. The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

§4.2.15 The Contractor shall not cover up work without the Architect and Owner performing an observation of such

work. The Contractor shall be responsible for any and all associated costs to allow for observation of the work, uncovered, by the Architect and Owner. If the Contractor covers work without either the consent of the Architect and Owner or without providing the Architect and Owner with reasonable opportunity to observe the work, whether or not such work is found to be acceptable by the Architect or Owner, the Contractor shall repair such work at no cost to the Owner.

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, away from the site, or otherwise to furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. The term "Subcontractor" includes persons supplying materials or equipment for the Work.

§ 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, away from the site, or otherwise to furnish labor or materials.. 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. The term "Sub-subcontractor" includes persons supplying materials or equipment for the Work.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. All Subcontractors shall be procured in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. If Contractor is a Construction Manager at Risk, all trade contractors and Subcontractors shall be procured in accordance with Sections 2269.255 and 2269.256 of the Texas Government Code. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its Subcontractors, and Sub-subcontractors, including those recommended or approved by the Owner.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor or if the Owner requires use of a specific Subcontractor, then the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. "Reasonable Objection" shall include, but not be limited to, Owner or Architect's prior experience of unsatisfactory work performed by the Subcontractor or debarment of the Subcontractor.

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

§ 5.2.5 The Owner may require the Contractor to change any subcontractor or supplier previously approved by it, if such a change is due to failure of subcontractor to perform in accordance with the requirements of the Contract. If Owner requires removal of a subcontractor for such failure to perform, and Contractor reasonably objects to such removal, then Owner will pay any actual increase in the cost between the new subcontractor and the subcontractor

replaced incurred by Contractor, taking into account any amounts which Contractor withholds or recovers in damages from the replaced subcontractor. If Contractor requests such payment from Owner, Contractor shall provide Owner with satisfactory proof of such additional costs incurred by Contractor.

§ 5.2.6 Contractor shall be fully responsible for the performance of its subcontractors, including those selected or approved by the Owner.

§ 5.3 Subcontractual Relations

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

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to ensure the payment of any monies to Subcontractors or Sub-subcontractor due to any non-payment to the Contractor, non-payment of Subcontractors by the Contractor, or non-payment of Sub-subcontractors by Subcontractors.

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract either in accordance with Article 14 or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor;
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bonds relating to the Contract;
- .3 such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; and
- .4 the Subcontractor provides bonds as required by law of prime contractors, and by Owner.

If the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption, or for the payment to the Subcontractor or supplier for Work, if payment for such Work has previously been made to Contractor. Such liabilities or obligations shall remain with Contractor. Owner shall only be responsible for compensating Subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by Subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.4.2 Such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor, Sub-subcontractor, or vendor may also be liable.

§ 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.

§ 5.4.4 All subcontracts shall state that they will be assignable to the Bond Trustee or his designee, if funding for the Project is obtained through bond proceeds.

§ 5.5 Notice of Subcontractor Default

Contractor shall promptly notify Owner and Architect in writing of any material defaults by any Subcontractor or Sub-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, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained for the Project. The Owner further reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same rights that the Contractor has under the Conditions of the Contract.

§ 6.2 Mutual Responsibility

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable site access and opportunity for introduction and storage or staging of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's Subcontractors, Sub-subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and scope of services contained therein.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of

the Contractor's Work and shall promptly report in writing to the Architect and Owner if Owner's Separate Contractors otherwise fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work and is performed in a timely manner. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually known to Contractor and are not reasonably apparent.

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

§ 6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

§ 6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

§ 6.2.3.3 All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. If such Separate Contractor initiates a claim or legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, based on Contractor's act or omissions or the act or omissions of Contractor's employees, Subcontractor, Sub subcontractor, or parties for whom Contractor has liability, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court and other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.6 The Contractor shall be responsible for any delays to a Separate Contractor caused by the Contractor or its Subcontractors, Sub-subcontractors, or suppliers.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires the approval of the Owner and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued, subject to the Owner's approval, 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. Contractor shall not make any claim for an adjustment to the Contract Sum or Contract Time due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to Contract Sum or Contract Time shall be valid unless so ordered or directed.

§ 7.1.4 Calculation of costs or credits for Changes, minor changes, Proposals, Contingency expenditures and Allowance expenditures:

1. When calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following from Subcontractors:

Description of Subcontractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Direct Labor Costs (See Article 1 Definitions)
- D Labor Cost Burden (See Article 1 Definitions)
- E Equipment
- F Work performed by Sub-subcontractor (if any), where Sub-subcontractor Overhead and Profit shall not exceed 10%
- G Subcontractor's Overhead and Profit, which shall not exceed 10% of A through F
- H Contractor's Overhead and Profit, which shall not exceed 10% of A through G
- I Cost of the Work (Sum of A through H)

2. When Contractor self performs work, when calculating the Cost of the Work for Changes, minor changes, Proposals, Contingency expenditures and Allowances, the Contractor shall furnish and include substantiation to satisfaction of the Owner of the following:

Description of Contractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Direct Labor Costs (See Article 1 Definitions)
- D Labor Cost Burden (See Article 1 Definitions)
- E Equipment
- F Contractor's Overhead and Profit, which shall not exceed 10% of A through E
- G Cost of the Work (Sum of A through F)

No additional Fee or General Conditions cost shall apply to self-performed Work.

3. By Unit Prices stated in the Contract Documents or subsequently agreed upon. Additional mark-ups for overhead and profit will not be allowed in Unit Price Work.

§ 7.1.4.1 The Contractor, upon receipt of written notification by the Owner or the Architect of a proposed item of change in the Work, shall prepare within 10 Calendar Days a Change Proposal in such form or forms as directed by the Owner or the Architect.

- .1 Each separate Change Proposal shall be numbered consecutively and shall include all cost related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractor's itemized accounting shall be included with the Change Proposal;

- .3 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed Change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Architect and the Owner;
- .4 A revised Change Proposal shall be the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix;
- .5 Upon written approval of a Change Proposal by Owner, the Architect and the Contractor, the Architect will prepare an Allowance Expenditure Authorization or Change Order authorizing such change in the Work; and
- .6 The Contractor shall request extensions of Contract Time due to changes in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a Contract Time extension. Any request for extensions of Contract Time must be substantiated through the demonstration of the impact of the proposed item of change in the Work to the critical path schedule for the Project.

§ 7.1.4.2 Formal Notice of Essence. Contractor recognizes and acknowledges that timely submission of a formal Change Proposal, whether or not the circumstances of the Change may be known to the Owner or available to Owner through other means, is not a mere formality but is of crucial importance to the ability of Owner to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in Requests for Information, statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of Paragraph 7.1.4.1, above, shall therefore be insufficient.

§ 7.1.5 In accordance with Texas Education Code §44.0411 if the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other Changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect.

§ 7.2 Change Orders

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

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

§7.2.2 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or be the basis of a change in the Contract Time unless and until such change has been authorized by a Change Order executed and issued by the Owner in accordance with the Contract Documents prior to the commencement of such modified or changed Work. Changes in the Work may be made without notice to Contractor's sureties and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§7.2.3 Contractor stipulates that acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all Claims, whether direct or indirect, including but not limited to, impact or delay damages, arising from the subject matter of the Change Order and attorney's fees and costs arising from a dispute with a Subcontractor or Sub-subcontractor over the Change Order.

§ 7.2.4 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and, if required by the Owner, the Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without

invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (additional mark-ups for overhead, profit and fees will not be allowed);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee subject to the limitations of Section 7.1; or
- .4 As provided in Section 7.3.4 subject to the limitations of Section 7.1.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall make a recommendation of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work, all subject to the approval of the Owner. The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Actual costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Actual costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Actual 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 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change Work, except that sales, use or similar taxes to which the Owner is exempt shall not be included in the calculation of costs; and
- .5 Actual additional 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 regardless of the Contractor's agreement with or disagreement with the adjustment in the Contract Sum or Contract Time or the method for determining them, and shall promptly advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs

and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified, which shall be further subject to the Owner's review, modification, approval, or rejection. The Architect's interim determination of cost, as modified and/or approved by the Owner, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Contractor to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may, subject to Owner approval, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum, Allowances, Contingencies or Contract Time, the Contractor shall notify the Architect in writing and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum, Allowances, Contingencies or Contract Time and written instruction from the Architect to proceed, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Owner shall also retain authority to order such minor changes in the Work. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

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 and approved by the Owner in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that Final Completion shall occur by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions.

§ 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 stipulates that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner's approval of such insurance..

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion and/or the date of Final Completion.

§ 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 or Architect, of an authorized employee of either, or of a Separate Contractor; (2) by changes

ordered in the Work; (3) by fire, governmental actions, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's reasonable control which do not arise through the action or inaction of Contractor or its Subcontractor, Sub-subcontractor or suppliers, could not have been reasonably anticipated, and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; (4) by delay authorized in writing by the Owner; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended in writing for such reasonable time as the Architect and Owner may determine. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract. Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts constituting intentional interference by the Owner which materially interfere with Contractor's performance of the Work, and then only to the extent that such acts continue after Contractor's reasonable prior written notice to Owner of such interference.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A disagreement concerning time extensions shall not relieve the Contractor from performing the Work required by the Contract Documents and shall not be cause for the Contractor to suspend Work on the Project.

§ 8.3.3 The Contract does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather, acts of God, supply chain issues, or market escalation. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time. Owner's exercise of any of its rights under the Contract Documents, including without limitation, its rights under Article 7, Changes in the Work, regardless of the extent or number of such changes or Owner's exercise of any of its remedies of suspension of the Work or requirement of correction or re-execution of any defective Work, shall not, under any circumstances, be construed as interference with Contractor's performance of the Work and shall not entitle the Contractor to any additional compensation.

§ 8.3.4 In the event of inexcusable delay by Contractor, Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work. All such acceleration shall be at no cost to Owner.

§ 8.3.5 In the event that Contractor does not complete the Work within the Contract Time, then in addition to any other costs and damages (liquidated or otherwise) for which Contractor is responsible, Contractor will provide, at its expense, any bonds required by governmental authorities to enable Owner to secure a Certificate of Occupancy (if required) even though there are items of Work which are incomplete.

§ 8.3.6 The Contractor's claims related to time shall be made in accordance with applicable provisions of the Contract Documents or they shall be deemed waived.

§ 8.3.7 Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts constituting interference by the Owner which interfere with Contractor's performance of the work, and then only to the extent that such acts continue after Contractor's written notice to Owner of such interference. Owner's exercise of any of its rights under the Contract Documents or Owner's exercise of any of its remedies of suspension of the Work or requirement or correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with Contractor's performance of the Work.

§ 8.3.8 Concurrent Delays. For purposes of the calculations provided for in this Paragraph 8.3.8, the words "concurrent delay", "concurrently delay" or "occur concurrently" mean the portion of two or more Delays affecting the critical path to Substantial Completion that are overlapping or co-existent. Contractor's right to a Contract Adjustment of the Contract Time (pursuant to Subparagraphs 8.3.8.1, 8.3.8.2 and 8.3.8.3, below) and Contract Price (pursuant to Subparagraphs 8.3.8.4, 8.3.8.5 and 8.3.8.6, below) shall, in the case of concurrent delays, be calculated in accordance with the following:

§ 8.3.8.1 If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of Days from the commencement of the first Delay to the cessation of the Delay which ends last.

§ 8.3.8.2 If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay or Compensable Delay exceeds the number of Days of such Unexcused Delay.

§ 8.3.8.3 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay and Compensable Delay, as determined pursuant to Subparagraph 8.3.8.1, above, exceeds the number of Days of such Unexcused Delay.

§ 8.3.8.4 If an Unexcused Delay occurs concurrently with a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Change Order to the Contract Price in accordance with the Agreement shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

§ 8.3.8.5 If a Compensable Delay occurs concurrently with an Excusable Delay, the maximum period of time for which Contractor shall be entitled to a Change Order to the Contract Price in accordance with the Agreement shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Excusable Delay.

§ 8.3.8.6 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Change Order to the Contract Price in accordance with the Agreement shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

§ 8.4 Liquidated Damages

§ 8.4.1 The Work to be performed under this Agreement shall be substantially completed by the date set forth in the Agreement, 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 in all phases of the Work, and that actual and direct damages would be suffered by the Owner if the Contractor does not substantially or finally complete all Work called for in the Contract Document by the specified dates. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute the agreement by Owner and Contractor that the amounts stated herein are the minimum value of the costs and actual and direct damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times of Substantial or Final Completion, that such sums are liquidated direct damages and as all not be constructed to be as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is therefore expressly agreed, as a part of the consideration inducing the Owner to execute this Contract, that the Owner may deduct from any payment(s) due to the Contractor a sum equal to the amount stated in the Agreement for each and every Calendar Day beyond the date set forth in the Agreement for Substantial Completion or Final Completion of the Work included in the Contract Documents. It is expressly understood that said sum per day is agreed upon as a real, justified, and fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially or finally 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, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

§ 8.4.2 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion shall run concurrently. If the Work is not finally completed by

the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 8.4.1 Intentionally Deleted.

§ 8.4.2 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion shall run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum, or if the Project is a Construction Manager at Risk Project, Guaranteed Maximum Price, 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 may, by mutual written agreement, be equitably adjusted.

§ 9.1.3 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its material obligations hereunder or otherwise is in default under any of the provisions of the Contract Documents, subject to the requirements of applicable law.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a Schedule of Values to the Architect and the Owner before the first Application for Payment, or in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, allocating the entire Contract Sum to the various portions of the Work. The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and the Owner. This Schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the Schedule of Values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Schedule of Values shall be prepared in such a manner that each major item of Work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G732 and G703 shall be used. In addition and for reference rules managing Applications for Payment shall consider Article 5 of the Agreement.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703 (or G732 and G703, as applicable), and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed, generally categorized by specification section, and further by type of application. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.

- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors, Sub subcontractors, and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Contractor agrees that, for purposes of Texas Government Code Sections 2251.021 and 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Certificate for Payment from the Architect shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code Sections 2251.021 and 2251.042.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor, Sub-subcontractor, or supplier, unless Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in Section 9.4.3 or 9.5. The retainage shall be paid with the Final Payment.

§ 9.3.1.4 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors, Sub subcontractors, and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$25,000.00 (Evidence of prior progress payment shall apply to progress payments 61-days or older). When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors, Sub subcontractors, and material suppliers with contracts in excess of \$25,000.00. Applications for Payment shall be certified as correct by Contractor. When requested by Owner or when required by the Davis-Bacon Act, each Application for Payment shall also be accompanied by Certified Payrolls and such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner. In addition to the other requirements of this Article, the initial Application for Payment shall be proceeded or accompanied by the following:

1. List of subcontractors,
2. Schedule of values,
3. Contractor's construction schedule (preliminary if not final),
4. If applicable, Combined Contractor's construction schedule (preliminary if not final) incorporating Work of multiple contracts, with indication of acceptance of schedule by each Contractor,
5. Products list (preliminary if not final),
6. Schedule of unit prices,
7. Submittal schedule (preliminary if not final),
8. List of Contractor's staff assignments,
9. List of Contractor's principal consultants,
10. Copies of building permits,
11. Copies of authorizations and licenses from authorities having jurisdiction for performance of the Work,
12. Initial progress report,
13. Report of preconstruction conference,
14. Certificates of insurance and insurance policies,
15. Performance and payment bonds,

16. Data needed to acquire Owner's insurance, and
17. Initial settlement survey and damage report if required

In addition to the other requirements of this Article, each subsequent Application for Payment shall be accompanied by:

1. Updated Microsoft Project schedule meeting the requirements of Section 3.10,
2. Log of Adverse Weather Days, and Instructional Days, including backup documentation,
3. Where Unit Costs are in use, measurements for payments will be made only for actual measured and/or computed length, area, solid contents, number, and weight, unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside finished dimensions shown in the Contract Documents. Include costs for waste, overages and tolerances in the unit price for that line item, and
4. Measurements for unit price quantities will be verified by the Architect/Engineer in conjunction with the General Contractor via inspection of the Work prior to submittal of interim Applications for Payment

§ 9.3.2 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 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 naming the specific materials or equipment stored and their location) 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 until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work, materials, and equipment covered by an Application for Payment will irrevocably pass to the Owner no later than the time of Owner's payment to Contractor of the invoiced cost. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No Work, material or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party. The Contractor further warrants that, upon submittal of an Application for Payment, all Work, materials, and equipment 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, Sub-subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR WORK, MATERIALS, EQUIPMENT, OR OTHER ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.3.4 Contractor shall submit monthly Applications for Payment electronically, or, if requested by Owner, in writing, to both the Architect and Program Manager, if applicable, in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G732 and G703, if applicable) and Continuation Sheet. All blanks

in the form must be completed and signatures of Contractor and Notary Public must be original on each form. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials, equipment, and supplies identified in the Applications for Payment have been purchased, paid for and received; that the Subcontractors, Sub-subcontractors, and suppliers have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that Contractor has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors, Sub-subcontractors, suppliers, and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including, but not limited to, Texas Penal Code Sections 32.46, 37.09, and 37.10, and may justify termination of Contractor's Contract with Owner.

§ 9.3.6 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) calendar days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized. Per Tex. Gov't Code Section 2252.032(f), on application to Owner for final payment and release of retainage, Owner may withhold retainage if there is a bona fide dispute between Owner and the Contractor and the reason for the dispute is that labor, services, or materials provided by the Contractor, or by a person under the direction or control of the Contractor, failed to comply with the express terms of the Contract or if the surety on any outstanding surety bond executed for the Contract does not agree to the release of retainage. Owner shall provide to Contractor written notice of the basis on which Owner is withholding retainage under this section.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect and Program Manager, if applicable, will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) certify, sign and issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) certify, sign and issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing with a detailed statement of the Architect's reasons for withholding certification and disputing in part certification in accordance with Texas Government Code Section 2251.042(a) and as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing with a detailed statement of the Architect's reason for withholding certification in whole in accordance with Texas Government Code Section 2251.042(a) and as provided in Section 9.5.1; or (4) return the Payment Application to the Contractor as provided in Section 9.3.4. Architect's written reason(s) for withholding certification shall be submitted in accordance with, and construed as, the notice required by Texas Government Code Section 2251.042 *et seq.* The Owner shall have the right to reject, modify, or approve the Architect's Certificate for Payment in whole or in part, and shall have the right to make the final determination of the payment to be made to the Contractor. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Contractor within forty-five (45) days of receipt of the Certificate for Payment from the Architect and Program Manager, if applicable, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed in writing to the Owner by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors, Sub subcontractors, and suppliers and other data unless 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. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors, accountants or other representatives acting in the sole interest of the Owner. By submitting the Contractor's Applications for Payment, the Contractor is certifying that the information presented is true, correct, accurate and complete; that he has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the previous Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the previous Applications for Payment; and that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanic's or material men's liens outstanding at the date of requisition; that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that except for such bills not paid but so included, there is no known basis for the filing of mechanic's or material men's liens; and that releases from all subcontractors and material men have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas causing all Work performed and for which payment has been made by the Owner to the Contractor. In certifying the Contractor's Applications for Payment, the Architect represents that he has observed the progress of the Work, critically evaluated, reviewed and certified that the amounts requested are valid and correct. The issuance of a certificate for payment shall not be a representation by the Architect that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner. The Contractor acknowledges that the Owner may authorize minor changes to the work and that those minor changes may be funded in full or in part from contingencies or allowances which are represented in Applications for Payment and supporting documents. The Owner will rely upon the accuracy of the Application for Payment and supporting documentation furnished by the Contractor in authorizing minor changes and expenditures against Allowances. Therefore, the Contractor agrees that any arithmetic error made by the Contractor in any Application for Payment and supporting documents such as contingency logs or allowance balances shall not create an obligation on the part of the Owner to pay additional sums to correct previously approved Applications for Payment. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid and shall be a prerequisite to any payment being made by the Owner to the Contractor. The Certificate of Payment is not binding on the Owner, and the Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, and on other information known to the Owner to determine the amount to be paid to or withheld from the Contractor.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to

make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including, but not limited to, loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors, Sub subcontractors, or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time; or
- .9 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

§ 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 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these General Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to any provision of the Contract Documents or withholding in reliance on any such Contract Document provision in good faith, or withholding, in good faith, in reliance on information that has come to the attention of the Owner that Owner reasonably believes constitutes sufficient reason to withhold payment, and no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment for undisputed amounts, the Owner shall review the Application for Payment and the Architect's Certificate and shall make payment or withhold payment in the manner and within the time provided in the Contract Documents, and shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code Section 2251.042 et seq, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents..

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors, Sub-subcontractors, suppliers and any other parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts. The Contractor shall pay each Subcontractor, Sub-subcontractor, and supplier, no later than seven days after receipt of payment from the Owner and before using any part of the payment from the Owner for any other purpose, the amount to which such party is entitled, reflecting percentages actually retained from payments to the Contractor on

account of such party's portion of the Work, and shall, if requested, provide the Owner with evidence of such payment. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner, and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors, Sub-subcontractor, or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor, in part or in whole, to the extent necessary to protect the Owner. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56, as applicable to Owner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. The Owner shall have the right at all times to contact Subcontractors, Sub subcontractors, and material and equipment suppliers to ascertain whether they have been properly paid. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties. In the event Owner receives any notices of non-payment from parties furnishing labor, materials, equipment or services for the Work, progress payments and/or Final Payment may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties for such amounts as the Contractor agrees or the Owner determines are due. Notwithstanding any other provision in the Contract Documents, neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor Sub-subcontractor or supplier. Action on the part of the Owner to require Contractor to pay a Subcontractor, Sub-subcontractor, or supplier shall not impose any liability on Owner.

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

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with the terms and provisions of the Contract Documents, including Article 11 herein, and in accordance with Texas Government Code Chapter 2253. Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, Sub subcontractors, or provided by suppliers shall be held in trust by the Contractor for the benefit of those Subcontractors, Sub subcontractors, or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner may notify the Contractor. The Contractor acknowledges that no lien rights exist with respect to public property.

§ 9.6.9 Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

§ 9.7 Failure of Payment

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may, subject to applicable law, stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not

provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Architect does not issue a Certificate for Payment within seven (7) days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) Business Days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional Business Days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion and without waiving any other remedies, elect either to:

- .1 deduct an amount equal to that to which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that to which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; system demonstrations have been performed; and a certificate of occupancy shall have been issued before Substantial Completion can be achieved. The Work will not be considered suitable for Substantial Completion review until all required governmental inspections and certifications required of the Work have been made, approved, and posted; designated initial demonstration and instruction of Owner's personnel in the operation of Project systems has been completed; all final finishes set out within the Contract Documents are in place as required by the Specifications, and there shall have been a completion of and acceptance by Owner of all major punch-list items and a majority of minor items are of a cosmetic nature, so that the Owner could occupy or otherwise utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under the Owner) normal business operations. All work that could interfere with the Owner's use following Substantial Completion shall be performed by the Contractor after hours at no additional expense to the Owner. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within ninety (90) consecutive calendar days following the date of Substantial Completion. In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all Liquidated Damages due Owner in accordance with the Contract Documents. In addition to the requirements of the Contract Documents, it is expressly understood that the establishment of Substantial Completion is subject to the following:

1. All major systems necessary to cause the facility to be used for its intended use.
2. All fire alarm system components must be completed and demonstrated to the Owner.
3. Local fire marshal approval certificate must be delivered to the Owner.
4. All HVAC air and water balancing must be complete.
5. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
6. All school communications equipment and telephone systems must be complete and demonstrated to the Owner.
7. All final lockset cores and keys must be installed, and labeled with a bitting list.
8. All room plaques and exterior signage must be complete.
9. All Owner demonstrations and training must be completed, including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
10. All exterior clean-up and landscaping must be complete.

11. All final interior clean-up must be complete.
12. A final Certificate of Occupancy conforming to the requirements of the location jurisdictional authority must be signed by the Contractor and delivered to the Owner.
13. All operation and maintenance manuals must be submitted to the Architect, approved by the Architect, and delivered to the Owner.
14. Temporary facilities and utility services have been removed
15. Flood elevation certificate furnished and accepted by all authorities having jurisdiction, including but not limited to the County in which the Project is located.
16. [Note to editor: Omit this requirement if not needed for Jurisdiction] Windstorm (WPI-8) certificate furnished and accepted by all authorities having jurisdiction, including but not limited to the County in which the Project is located.

§ 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, using the Owner's Project Management Software, prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to Final Payment. The punch list shall contain an area or room description, and a photograph of each deficiency listed in the punch list and a space for contractor and architect to individually indicate the date of the correction and observation of the correction, respectively. 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. The Architect and/or Owner shall have the right to add additional items to be completed or corrected to the comprehensive list submitted by the Contractor.

§ 9.8.2.1 The Contractor's Project Manager or superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and Owner for supplementation. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Architect determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the Work to be done.

§ 9.8.2.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's Superintendent or Project Manager shall accompany the Architect, his Consultants and the Owner (at his discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's Project Manager or Superintendent shall record or otherwise take notes of all supplementary items and incorporate into the Final Punch List. A typed addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a Final Punch List that has the Contractor's, Architect's, Consultant's and Owner's comments incorporated in only one list using the Owner's Project Management Software. Delay in the preparation of the Final Punch List shall not be cause for a claim for additional cost or extension of time as the Contractor's superintendent shall have been in attendance during the inspections of the Architect and its consultants and will have been expected to have taken appropriate own notes.

§ 9.8.2.3 The Contractor's Project Manager or Superintendent shall have been in attendance during the inspections of the Architect and his Consultants and will have been expected to take his own notes for addition to the Final Punch List.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine dates of Substantial Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from Final Payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare, sign, and issue to Owner 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 Final Punch 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.

§ 9.8.5.1 After the date of Substantial Completion of the Project as evidenced by the Certificate of Substantial Completion, the work to correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion shall be completed by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. Failure by the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In the report of deficiency the Contractor and surety will be informed that, should correction remain incomplete for ninety (90) additional days, the Owner will initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14.2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions, will be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more than one re-inspection after notification by the Contractor that corrections are complete; the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor.

§ 9.8.5.2 The issuance of a Partial Certificate of Substantial Completion shall not relieve the Contractor from the obligation to obtain Substantial Completion for the portions of the project not included in the Partial Certificate of Substantial Completion by the dates indicated in this Agreement. The issuance of a Partial Certificate of Substantial Completion shall not relieve the Contractor from the assessment of liquidated damages for the portions of the project not included in the Partial Certificate of Substantial Completion by the dates indicated in this Agreement.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, at its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted. Final Completion includes submittal of all required closeout and record documents. The Contractor's request for retainage payment shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 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, if such consent is necessary, 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 that the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner 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 or Owner. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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

§ 9.9.3 Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if the Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.9.5 Non-Triggering of Substantial Completion by Owner Occupancy: The parties expressly acknowledge and agree that any occupancy or use of the Project, or any portion thereof, by the Owner prior to formal acknowledgment of Substantial Completion as defined in the Contract Documents does not constitute or imply the attainment of Substantial Completion. Any necessity or decision by the Owner to occupy the Project, or any portion thereof, prior to the Contractor's full completion of all contractual obligations does not accelerate or alter the Contractor's duties or the standards for Substantial Completion. The Contractor remains fully obligated to achieve Substantial Completion according to the terms set forth in the Contract Documents, irrespective of any such early occupancy or use by the Owner. The Owner's occupancy, whether full or partial, will not trigger or cause Substantial Completion or affect any rights or obligations that arise upon Substantial Completion, including but not limited to, commencement of any warranties or guarantees, or the period for final completion.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and all required documentation has been submitted, and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor shall issue its final Application for Payment. Upon the Architect's agreement and approval, the Architect will promptly prepare, sign, and issue a Owner's Certificate of Final Completion and final Certificate for Payment certifying to the Owner that best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance, including all retainage, found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as well as the Architect's certifications, in determining the payment to be made to Contractor. Final Payment shall be made by the Owner in accordance with Owner's regular schedule for payments. The Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.10.2 Neither Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706, 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) evidence satisfactory to Owner 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) using AIA Document G707, Consent of Surety, if any, to Final Payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts currently withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A, notarized subcontractor lien releases, and other receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract or the Work, to the extent and in such form as may be designated by the Owner. If a Subcontractor, Sub-subcontractor, or supplier 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. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7.
- .2 Final List of Subcontractors (AIA Document G705);
- .3 Contractor's certificate(s) required by 19 Tex. Admin. Code 61.1036-61.1040, as applicable;
- .4 Contractor's and other required warranties, organized as required elsewhere in the Contract Documents;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 Record drawings and "as built" drawings as required elsewhere in the Contract Documents.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final Payment shall be paid by the Owner to the Contractor within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment, unless otherwise delegated.

Owner, Architect, Contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable school facility standards required in 19 TAC Section 61.1040 subsections (d) and (g)-(k). 19 TAC Section 61.1040(f).

Per 19 TAC Section 61.1040(6)(f)(C), Contractor shall certify the following:

- (i) Process certifications. To ensure construction quality and performance of contract terms, the Contractor and prime subcontractors, if applicable, shall certify compliance that the Project has been built in conformance with the contract documents.
- (ii) Certifications related to construction quality standards under subsection (j) of 19 TAC Section 61.1040.

To ensure compliance with construction quality standards, the Contractor and prime subcontractors, if applicable, shall certify compliance at the completion of a capital improvement project that the Project has been built in conformance with the contract terms and performance standards specified by the Contract Documents for the Contractor and for any of its subcontractors or subconsultants of any tier, which shall include certification of compliance with any subsequent change order documents approved by the Owner and Architect.

Where a third-party code compliance officer is required by subsection (j) of 19 TAC Section 61.1040 to ensure that a third-party code compliance officer does not find any violations of the provisions of the required construction codes identified in subsection (j)(1) of 19 TAC Section 61.1040 that are not enforced by a state or local authority having jurisdiction, Owner shall require that a third-party code compliance officer issue a third-party certificate of occupancy. Where a local authority having jurisdiction enforces some of the required construction codes, a third-party code compliance officer shall not issue a third-party certificate of occupancy until either the local authority having jurisdiction has issued a certificate of occupancy or the local authority having jurisdiction indicates in writing to the third-party code compliance officer that the local authority having jurisdiction does not issue certificates of occupancy.

Certifications related to safety and security standards under subsection (k) of 19 TAC Section 61.1040. To provide a safe and secure environment, the Contractor and prime subcontractors, if applicable, shall certify compliance that the Project has been built in reasonable accordance with the safety and security directives provided by the school district and reflected in the Contract Documents prepared by the Architect.

Special provisions for a Construction Manager-Agent. For projects that use the construction manager agent contracting method established in Texas Government Code Chapter 2269, Subchapter E, the Construction Manager Agent and each construction prime contractor must provide certification in accordance with clause (i) of 19 TAC Section 61.1040, and each shall certify the scope of work for which they are contractually responsible.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Architect so confirms,

the Owner shall, upon application by the Contractor and certification by the Architect and, if necessary, written consent of the surety, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted, less retainage. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of Claims by Owner. Nothing in this subsection is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

§ 9.10.4 The making of Final Payment shall not constitute a waiver of Claims by the Owner.

§ 9.10.5 Acceptance of Final Payment by the Contractor, a Subcontractor, Sub-subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's performance of its obligations under Article 10 shall not relieve any Subcontractor, Sub-subcontractor, supplier, or any other person or entity, of their responsibilities for the safety of persons and property and for compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, nor shall any such party be relieved from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards.

§ 10.1.2 Contractor's employees, agents, Subcontractors, Sub-subcontractors, suppliers or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, Subcontractors, Sub-subcontractors, suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students, and other persons on or off Owner's premises who may be affected thereby, including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational or other facility;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, a Sub-subcontractor, or a supplier; and

- .3 other property at the site or adjacent thereto, such as other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall also do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes full possession of and occupies that portion of the Project.

§ 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. The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 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 installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

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

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

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

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

§ 10.2.8 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 or to other portions of the Project. The Contractor shall be responsible for performing all repairs and/or replacement of any Work that results from foreseeable weather conditions, and shall also be responsible for all repairs and/or replacement of any other portions of the Project to the extent such repairs and/or replacement are required as a result of Contractor's failure to properly secure the Work or otherwise take precautions with respect to the Work as required under this Section 10.2.8.

§ 10.2.9 Injury or Damage to Person or Property

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts and omissions 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 twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Provided, however, Contractor understands that, under Texas law, Owner has tort immunity.

§ 10.2.10 The performance of the foregoing services 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.

§ 10.2.11 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 and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Contractor shall have no responsibility to initially discover the presence of such hazardous materials on the project site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Contractor or the Contractor's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Contractor places or allows such hazardous materials to be placed on the Project site. If Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume within a reasonable time to be determined upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion to the extent of any delay directly attributable to efforts to remove or safely contain a material or substance as required hereunder.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

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

Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 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 actual cost and expense thereby incurred.

§ 10.4 Emergencies

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

§ 10.5 Materials Containing Asbestos, Lead or PCB's

§ 10.5.1 As part of submittals under the section in the Project Manual related to Contract Closeout, and prior to Final Payment and payment of retainage, the Contractor and, as applicable, each Subcontractor, Sub-subcontractor and supplier shall submit all applicable Safety Data Sheets (SDS) and a notarized statement on company or other official letterhead certifying to the best of their information, knowledge and belief, that no lead, asbestos, asbestos-containing (or, under reasonably foreseeable conditions, releasing) materials or PCBs 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, have been used or incorporated into the Work, and lead or lead-bearing (or, under reasonably foreseeable conditions, releasing) materials have not been incorporated into potable water systems. As used in this statement, the term "potable water systems" shall include, without limitation, those water systems for drinking fountains, all sinks, showers, bath tubs, residential and commercial kitchen equipment, ice machines, and hose bibs, as applicable to the Project. The notarized statement shall further state that, should any such materials be found in any of the Work in contravention of the notarized statement, then Contractor shall be responsible for taking all necessary corrective action to remove those materials from the Work, at no additional cost to the Owner. The notarized statement shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the Contractor or the applicable Subcontractor, Sub-subcontractor, or supplier.

§ 10.5.2 To the best knowledge of the Owner, the Architect and his consultants, no products or materials containing asbestos or polychlorinated biphenyl (PCB) or other toxic substances have been specified for this Project. In the event the Contractor, its Subcontractors, Sub-subcontractors, or suppliers become aware that any products or materials specified, ordered, scheduled for or already incorporated in the Work on this Project, contain any hazardous material, whether stated in the Contract Documents or not, the situation shall be reported immediately to the Owner and Architect in writing. An acceptable, equal substitute for the product or material in question shall be proposed by the Contractor, and the product or material in question, if already onsite or incorporated in the Work, shall be removed from the site immediately and returned to the supplier or manufacturer.

§ 10.5.3 Final Payment and payment of retainage shall not be made until the information and notarized statements required under Section 10.5 have been received by Owner.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, its trustees, officers, employees, agents, and representatives, Architect, and Architect's consultants, the Program Manager, if applicable, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

§ 11.1.3 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.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Without limiting or waiving Owner's right to earlier notice of any modification, termination, or expiration of insurance coverages as provided in the Contract Documents, immediately upon the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation, expiration, or other lapse,. Upon receipt of written notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date of Substantial Completion and such dates of Owner responsibility shall be documented in the Certificate of Substantial Completion. If Owner occupies or uses any completed or partially-completed portion of the Work at any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, if any, Contractor's builder's risk shall be primary and non-contributory.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If the Contract Documents specify, or the Architect or Owner requests, that certain Work shall not be covered until the Architect has had an opportunity to examine such Work, the Contractor shall notify the Architect in writing a minimum of 48 hours prior to covering up any such Work in progress in order for the Architect to make proper field observations of the Work in place. The Contractor shall place no concrete, fill-in ditches, or cover up walls or ceilings without first contacting the Architect as noted above and receiving approval. If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire 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 nonconforming condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

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

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

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to that corrected Work.

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

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

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

§ 12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or by defects in the Work.

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Harris County, or, if no county is specified, then the county in which the Owner's main administrative office is located.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Except as expressly provided otherwise in the Contract Documents, neither party to the Contract shall assign the Contract, in whole or in part, 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 invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals, which shall be included in the Cost of the Work. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. Where Test and Balance of either air/water or similar, the Contractor shall have their subcontractors perform initial work and assist in this process when requested by the Owner.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of

when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by Texas Government Code Section 2251.025. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity in Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall not discriminate against any employee or applicant for employment in the performance of the Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, age (except where based on a bona fide occupational qualification), disability, sex except where based on a bona fide occupational qualification), national origin, ancestry, or any other basis protected by law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies. Contractor further agrees that every subcontract entered into for the performance of the Agreement will contain a provision requiring non-discrimination in employment herein specified. Breach of this covenant may be regarded as a material breach of the Agreement.

§ 13.6.2 The Contractor and the Contractor's Subcontractors and Sub-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, color, religion, age, disability, sex, national origin, ancestry, or any other basis protected by law.

§ 13.7 Records

§ 13.7.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.7.2 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.7.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

§ 13.7.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

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

§ 13.8 Proprietary Interests and Confidential Information

§ 13.8.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.8.2 Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

§ 13.8.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, certain open records laws and other disclosure requirements, including, but not limited to, the Texas Public Information Act, Texas Government Code Chapter 552, et seq., subpoenas, and court orders. Nothing in the Contract shall be construed as prohibiting Owner from disclosing any information related to or in connection with the Contract in accordance with such requirements, and Contractor hereby waives any claim against and releases from liability Owner, its trustees, officers, employees, agents, and attorneys with respect to any such disclosure.

§ 13.9 The Architect may appoint an employee or other person to assist it 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.

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

§ 13.11 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 it, nor any of its affiliates, subsidiaries, or its parent company, if any (the "Contractor Companies"), boycott Israel, and Contractor agrees that it and the Contractor Companies will not boycott Israel during the term of the Contract. For purposes of the Contract, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

§ 13.12 In accordance with Texas Government Code § 2269.054, the Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization.

It is expressly understood that this Contract is not written for the benefit of third parties.

§13.12 Certificate of Nonsegregated Facility

§13.12.1 This section is applicable to Contracts and Subcontracts exceeding \$10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause.

§13.12.2 By the signing of this Contract, the Contractor signifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The undersigned agrees that a violation of this certification constitutes a breach of this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, Work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except where it obtained identical certifications from proposed consultants for specific time period) it will obtain identical certifications from proposed Subcontractors prior to the award of a contract exceeding \$10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods): Notice to Prospective Subcontractors of requirement for certification of nonsegregated facilities. A certification of nonsegregated facilities, as required by the May 19, 1967 Order (32 FR 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

§ 13.13 In accordance with Texas Business & Commerce Code § 116.0001, as soon as practicable after beginning construction of the project, Contractor shall visibly post the following information at the entrance to the construction site: (1) the name and contact information of the Contractor; and (2) a brief description of the project.

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 ninety (90) 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 Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums due on an approved 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, then, after the applicable time period, the Contractor may, upon ten (10) business days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters material to the progress of the Work, the Contractor may, upon twenty (20) additional business days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors, Sub subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors, Sub subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and subject to any prior rights of the surety, 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 (7) 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. Any further payment shall be limited to amounts earned to the date of termination.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance of the Contract Sum, the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, 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 Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights

set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time may, by mutual written agreement, 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 may include profit, upon written agreement of the parties. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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 Owner shall pay the Contractor for Work properly executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

§ 14.5 Termination by the Owner for Non-Appropriation

§ 14.5.1 If the Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, the parties agree that the Contract is a commitment of Owner's current revenue only. As such, notwithstanding any contrary provision of the Contract, any payment obligation(s) of Owner created by the Contract shall be conditioned upon the availability of funds that are duly appropriated and allocated for such purpose. If such funds are not available, as determined by Owner in its sole discretion, Owner shall have the right to terminate the Contract, without default, penalty, or further obligation or liability to Contractor, effective at the end of the period for which such funds are available. In the event this provision is exercised, Owner shall provide written notice of non-appropriation, specifying the effective date of termination, to Contractor as soon as is reasonably practicable.

§ 14.5.2 Upon receipt of notice from the Owner of such termination for non-appropriation, 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.

§ 14.5.3 In case of such termination for non-appropriation, to the extent that funds have been duly appropriated and allocated for such purpose and are available, the Owner shall pay the Contractor for Work properly executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of the Contract terms, a change in the Contract Time, or other relief with respect to the terms of the Contract, the Work, or the Project. The responsibility to substantiate Claims shall rest with the Contractor. 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 Litigation

The Contractor shall commence all litigation against the Owner 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, if any, and within the period specified by applicable law, but in any case not more than 8 years after the date of Substantial Completion of the Work, unless extended in accordance with Texas Civil Practice & Remedies Code Section 16.009. The Contractor waives all claims not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim or within twenty-one (21) calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety-one (91) days after the occurrence of the event giving rise to such claim or within ninety-one (91) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

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

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time may be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost Or an Increase in the Contract Sum

If the Contractor wishes to make a Claim for additional cost or for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if otherwise delegated and provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution or other legal remedies as provided for in the Contract Documents. Under no circumstances shall a claim for additional cost or for an increase in the Contract Sum resulting from supply chain issues or market escalation be approved by Owner.

§ 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, such a Claim shall be documented in accordance with Article 8 and notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of the 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 Claims for increase in the contract time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. Additionally, any Claim for additional time based on adverse weather conditions 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.

1. Weather data in the table below shall form the baseline for establishing Anticipated Adverse Weather Days per month associated with the Project schedule duration.

Anticipated Adverse Weather Days	
Month	Total of Weather Days Allowed
January	6
February	6
March	5
April	4
May	6
June	7
July	6
August	6
September	6
October	6
November	6
December	6

a. The Anticipated Adverse Weather Days shall be submitted with the Contractor's Construction Schedule for documenting future weather events and is considered to be part of the Project duration forming the Contract Time.

2. When the Project requires work in an occupied building, Instruction Days in the table below shall form

the baseline for establishing Instruction Days per month associated with the Project schedule duration.

Anticipated Instruction Days	
Month	Total of Instruction Days Allowed
January	0
February	0
March	0
April	4
May	4
June	0
July	0
August	0
September	0
October	0
November	0
December	0

a. The Anticipated Instruction Days shall be submitted with the Contractor's Construction Schedule for documenting future Instruction Days and is considered to be part of the Project duration forming the Contract Time.

3. Submission for Time Extension

a. Although the Contractor is required to document the occurrence and effect of Adverse Weather or Instruction Days on the Work, it does not relieve the Contractor/Architect of its responsibility to investigate and determine if an excusable delay has occurred.

b. The schedule of Anticipated Adverse Weather Days and Instruction Days included in the Contract is established in Work Days. Similarly, actual weather data should be collected and recorded on a Work Day basis. Monthly summaries should be maintained indicating actual Adverse Weather conditions or Instruction Days and the impact on Work activities.

c. To determine if a given month experienced Adverse Weather Days or Instruction Days, the number of actual Adverse Weather Days or Instruction Days is subtracted from the Anticipated Adverse Weather Days or Anticipated Instruction Days. If the number of Adverse Weather Days or Instruction Days is greater than the Anticipated Adverse Weather Days or Anticipated Instruction Days for a given month, then the Contractor has experienced unusually severe weather or Work disruption for the given month. If the number of Adverse Weather Days or Instruction Days is less than the Anticipated Adverse Weather Days or Anticipated Instruction Days for a given month, then the Net Days shall accumulate to the remaining months and shall be treated as float to the Project. Float time contained in the Contractor's Construction Schedule is not for the exclusive benefit of the Contractor or the Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

d. THE DETERMINATION THAT UNUSUALLY SEVERE WEATHER OR INSTRUCTION DAYS OCCURRED DOES NOT AUTOMATICALLY MEAN THAT THE CONTRACTOR RECEIVES A TIME EXTENSION FOR THE DIFFERENCE OF DAYS BETWEEN THE ANTICIPATED AND ACTUAL ADVERSE WEATHER DELAY OR INSTRUCTION DAYS. Further analysis is necessary to determine if the unusually severe weather or Instructional Days delayed Work activities critical to Contract completion. The Contractor's progress schedule must be evaluated to make this determination. If it is found that unusually severe weather or Instructional Days delayed the Contract, a Contract Modification shall be issued.

e. Claims for increase in the Contract Time shall set forth in writing the detail noting the circumstances that form the basis for the claim, the date upon which each cause of delay began to

affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall bear the entire economic risk of all weather delays and Instruction Days disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect in writing not later than with each Application for Payment and shall include documentation demonstrating the nature and duration of the delays or disruptions. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation.

f. The parties agree that the reconciliation of the change attributable to Adverse Weather or Instruction Days will occur at the time of Project Final Completion but the Contractor shall provide weekly reporting on weather delays, noting what happened, how they were affected. A claim for rain shall not be made unless total rainfall from 12:01 am to 12:00 pm exceeds 0.25".

§ 15.1.6.3 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors, Sub-subcontractors, or suppliers or otherwise under Contractor's control. Claims for extension of time may only be considered because of Adverse Weather Days, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Claims for extension of time because of hindrances or delays not the fault of either Contractor or Owner shall be considered, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Unless otherwise delegated, Board approval shall be required for any extension of time. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.6.4 Notwithstanding any provision herein to the contrary, if the Contractor desires to make a one-time Claim for costs directly resulting from permit delays, this Section 15.1.6.4 shall apply. Any Claim for costs directly resulting from permit delays may only begin accruing following the expiration of the anticipated permit release duration stated in the procurement solicitation, and regardless of the duration stated in the procurement solicitation, only if the duration from Notice to Proceed to release of permit exceeds 90 Calendar Days. A Claim under this Section 15.1.6.4 shall be made no later than twenty-one (21) calendar days after the permit has been released. In making such a one-time Claim for costs directly resulting from permit delays, the Contractor shall be limited to a percentage change rate per day for any claimed actual additional costs, regardless of actual cost to the Contractor or any subcontractor. Claims for Contractor's general conditions will not be allowed. If the Claim is approved, the percentage change rate per day shall be determined as follows: Reference source is the Building Cost Index (BCI) change as reported by Engineering News Record (ENR) at the following link (https://www.enr.com/economics/historical_indices/Dallas). Using the BCI published in the month preceding the due date of the proposals as the baseline value, average the next three (3) months of subsequently reported data; divide the three (3) month average by the benchmark value, subtract one, and convert to percentage; divide the result by ninety (90) days to determine the daily change limit of any actual costs. Additionally, in making a Claim for additional actual costs under this section, the Contractor agrees that the Owner, Architect, or their respective agents is thereby entitled to review all (related or unrelated to the Claim) bids, proposals, quotes, quantity take-offs, and executed subcontractor agreements for the Project and to contact subcontractors to verify facts pertaining to same. Owner shall be entitled to a credit if the Owner, Architect, or their respective agents' inspection of all bids, proposals, quotes, quantity take-offs, and subcontractor agreements indicate a variance in favor of the Owner. The completion of the Owner's inspection and issuing of a report of the determination of finding relating to a Claim under this section is a precondition to the commencement of time limits for Claims stated in § 15.2. Any Claim under this section 15.1.6.4 shall be subject to the review and approval/rejection procedures outlined in Article 8 and 15.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives all Claims against Owner for consequential damages arising out of or relating to this Contract, including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

§ 15.2 Resolution of Claims and Disputes

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date Final Payment is due, unless thirty (30) days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of the receipt of a Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the Architect 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 Architect in making a written recommendation.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days (or in the case of Owner, ten (10) business days) after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

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

§ 15.2.6 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.3 Alternative Dispute Resolution

§ 15.3.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may upon mutual written agreement, after written recommendation by the Architect or thirty (30) days after submission of the Claim to the Architect, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claim. Claims for injunctive relief shall not be subject to this Section.

§ 15.3.2 The parties may endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing to the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1.

§ 15.4 No Arbitration

Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. Nothing in the Contract shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of Owner, its trustees, officers, employees, or agents as a result of the execution of the Contract or performance of the functions or obligations described therein.

§ 15.6 In any adjudication under this Agreement, attorneys' fees may be awarded as provided by law.

ARTICLE 16 ADDITIONAL PROVISIONS

§ 16.1 These general conditions incorporate by reference the following documents:

Exhibit A: Wage Rate Determination

OWNER *(Signature)*

« »« »

(Printed name and title)

(Date)

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)

(Date)