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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 « » day of « » in the year « »
(In words, indicate day, month and year.)

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

«Beaumont Independent School District »« »
«3395 Harrison Ave »
«Beaumont, Texas 77706 »

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

«To be Determined »« »
« »
« »
« »

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

«Air Handler Replacements at four (4) District Campuses »

(a) Administration Annex
(b) Beaumont United High School
(c) Odom Academy
(d) Roy Guess Elementary School

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

«Salas O'Brien »« »
«10930 W. Sam Houston Pkwy North, Ste. 900 »
«Houston, TX 77064 »

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.

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TABLE OF ARTICLES

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), 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 and their order of precedence, other than a Modification, appear in Article 9.

§ 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 from the Owner. 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 a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner. Work at the Project site shall not begin until Owner has received all required payment and performance bonds and insurance »

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

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

§ 3.3 Substantial Completion
§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall 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: «TBD »

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

Portion of Work	Substantial Completion Date
TBD	

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

ARTICLE 4 CONTRACT SUM
§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be «TBD » ($ «TBD »), subject to additions and deductions as provided in the Contract Documents. In accordance with 2 CFR 200.319,.320, Contractor recognizes and agrees that the Contract Sum is a ceiling price that the Contractor exceeds at its own risk and Contractor shall provide Owner with reasonable assurance that the Contractor is using efficient methods and effective cost controls.

§ 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
TBD	

§ 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.)

«Refer to AIA A201, as modified by the Owner for the project, for Liquidated Damages »

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

« n/a »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

« »

§ 5.1.3 Refer to AIA A201, as modified by the Owner for the project, for payments.

§ 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; 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.

§ 5.1.7 Retainage

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

«10% if contract valued at <$5M; 5% if contract is valued at $5M+ »

§ 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.)

« None »

§ 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 »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment

pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017, 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 that 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, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the 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 Owner policy. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 5.3 Interest
Undisputed 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/Engineer 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, 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 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 requiring an increase in an amount of $50,000 or more, to the Contract Sum, 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:

«Dr. Shannon Allen, Superintendent of Schools, or successor »

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

«TBD»

§ 8.4 The Contractor's representative shall not 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/Engineer must be copied on notices sent to the Owner.

§ 8.7 Other provisions:

§ 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.

§ 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 that 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 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 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), Contractor hereby certifies and verifies that Contractor, 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 Contract. 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).

§ 8.7.19 If (a) Contractor is not a sole proprietorship; (b) Contractor 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 Contract is not excepted under TEX. GOV'T CODE § 2274.003 of SB 19 (87th leg.); and (e) Owner has determined that Contractor 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), Contractor hereby certifies and verifies that Contractor, 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.

§ 8.7.20 Owner is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to Contractor 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. Contractor certifies that neither it nor its parent company nor any affiliate of Contractor 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 Contract, "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.). Contractor verifies and certifies that Contractor 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.

§ 8.7.21 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.

§ 8.7.22 The Contractor shall utilize online project management software as required by Owner.

§ 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 Jefferson 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 Jefferson 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 Miscellaneous Provisions

§ 8.10.1 Contractor shall keep all accounting and construction records on the Project for a period of at least twelve years after Final Completion of the Project, and thereafter shall offer the records to the Owner in writing, in order for Owner to comply with its records retention requirements, per the Texas Government Code section 441.158 et seq. and the Texas Library and Archives Commission's Local Schedule GR (Government Records). In the alternative, Contractor may provide such records to Owner for retention at any time if Owner agrees in writing to accept such records in lieu of Contractor's retention under this Section.
In addition to the foregoing, because federal funds are being used to make payments under this Agreement, the U.S. Department of Education (USDE), the Texas Education Agency (TEA) (as the pass-through entity), Owner, any of their duly authorized representatives, and any auditors have the right of timely and unrestricted access to any books, documents, papers, or other records (including without limitation financial statements) of Contractor that are

pertinent to this Agreement, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to Contractor's personnel for the purpose of interview and discussion related to such documents. Contractor shall permit TEA, TEA representatives, and auditors to have access to Contractor's records and financial statements as necessary for TEA to meet the requirements of 2 CFR § 200.331. The rights of access provided for in this Agreement are not limited to the required retention period but shall last as long as the records are retained.

§ 8.10.2 Contractor shall comply with all applicable laws, codes, and ordinances. The laws, regulations, codes, ordinances and orders of governmental bodies having jurisdiction (referenced above) include, but are not limited to, the following: (1) all applicable Federal, state, and local laws, statutes, rules, and regulations, and all terms, conditions, and requirements of Award, including, without limitation, the Education Department General Administrative Regulations (EDGAR) (including without limitation 2 CFR Part 200) and the provisions of 34 CFR 76.600 and 75.600-75.618 (including 34 CFR 75.616(c)'s requirement of the use of American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) standards); (2) all applicable building regulations, requirements, and codes (including building codes or specifications for HVAC systems, which may be consistent with standards identified by the EPA, CDC, or World Health Organization); (3) the access requirements of the Americans with Disabilities Act; (4) section 504 of the Rehabilitation Act; (5) the Flood Disaster Protection Act of 1973; 67) the National Historic Preservation Act of 1966; (7) all applicable Grant Program Requirements included in the General and Fiscal Guidelines (available at https://tea.texas.gov/finance-and-grants/grants/grants-administration/guidelines-provisions-and-assurances), the Program Guidelines (available at https://tea4avcastro.tea.state.tx.us/eGrants/22-23/23610101/ESSA-proguider1.pdf), the General Provisions and Assurances (available at https://tea.texas.gov/finance-and-grants/grants/grants-administration/guidelines-provisions-and-assurances), and/or the Program-Specific Provisions and Assurances (available at https://tea4avcastro.tea.state.tx.us/eGrants/22-23/23610101/ESSA-progspecificr3.pdf); all applicable requirements related to closeout of Owner's subaward included in the General and Fiscal Guidelines (available at https://tea.texas.gov/finance-and-grants/grants/grants-administration/guidelines-provisions-and-assurances); assisting the Owner with completing an environmental impact assessment before initiating construction and fully considering any potential environmental ramifications before proceeding with the Project (34 CFR 75.601); considering the probable effects of proposed construction on any district, site, building, or structure that is included or eligible for inclusion in the National Register of Historic Places (34 CFR 75.602); ensuring the Owner has title or other interest in the site, including right of access that is sufficient to ensure that the Owner will have use and possession of the facility for 50 years or the useful life of the facility, whichever is longer (34 CFR 75.603); ensuring that the Project is functional, economical, and not elaborate in design or extravagant in the use of materials as compared to other facilities in the State or other applicable geographic area (34 CFR 75.607); the Project shall comply with applicable Federal, State, and local health and safety standards, as well as Federal requirements regarding access by persons with disabilities (34 CFR 75.609-75.610); comply with the avoidance of flood hazards (34 CFR 75.611); (8) zoning requirements; and (9) health and safety regulations.

§ 8.10.3 In accordance with 2 CFR 200.321, the Contractor shall ensure that all necessary affirmative steps are taken to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, including: 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and 6) if subcontracts are to be let, Contractor shall take the affirmative steps listed in (1) through (5) of this paragraph relating to subcontractors.

§ 8.10.4 In accordance with 2 CFR 200.322, the Contractor must assist the Owner with compliance with requirements relating to domestic preference for procurements, including, to the greatest extent practicable under a Federal award, providing a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The domestic preference requirements is hereby included in the Contract with the Contractor and all subawards, including all contracts and purchase orders for work or products under the Award.

§ 8.10.5 In accordance with 2 CFR 200.325, the Contractor must assist the Owner with compliance with any review conducted by TEA, U.S. Department of Education, and/or other governing entities/agencies, including providing all procurement documents, technical aspects, and the like for inspection/review.

§ 8.10.6 In accordance with the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower-Tier Covered Transactions" associated with TEA grants, the Contractor must accept and comply with all applicable requirements described in that certification, which is available at https://tea.texas.gov/sites/default/files/P_As_Debarment%20and%20Suspension.pdf. By entering this Agreement, Contractor indicates such acceptance and compliance.

§ 8.10.7 In accordance with the "Lobbying Certification" associated with TEA grants, the Contractor must accept and comply with all applicable requirements described in that certification, which is available at https://tea.texas.gov/sites/default/files/Lobbying%20Certification%205.28.15.pdf. By entering this Agreement, Contractor indicates such acceptance and compliance.

§ 8.10.8 In accordance with the "No Child Left Behind Act of 2001" provisions and assurances associated with TEA grants, the Contractor must accept and comply with all applicable requirements described in those provisions and assurances, which are available at https://tea.texas.gov/sites/default/files/Provisions%20and%20Assurances%20NCLB%20%282015-06%29.pdf. By entering this Agreement, Contractor indicates such acceptance and compliance.

§ 8.10.9 In accordance with the "Every Student Succeeds Act" provisions and assurances associated with TEA grants, the Contractor must accept and comply with all applicable requirements described in those provisions and assurances, which are available at https://tea.texas.gov/sites/default/files/ESSA%20Provisions%20and%20Assurances%205-2018.pdf. By entering this Agreement, Contractor indicates such acceptance and compliance.

§ 8.10.10 The Contractor must assist the Owner in complying with all ESSER guidelines provided in all applicable Grant Program Requirements included in the General and Fiscal Guidelines, the Program Guidelines, the General Provisions and Assurances, and/or the Program-Specific Provisions and Assurances, and all applicable requirements related to closeout of Owner's subaward included in the General and Fiscal Guidelines, as applicable to the Project.

§ 8.10.11 Davis-Bacon Prevailing Wages

§ 8.10.11.1 Contractor shall comply with all requirements imposed by the Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). The Award requires that all prime construction contracts in excess of $2,000 awarded by the Owner must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor is required to pay wages not less than once a week. The Contractor shall comply with the current prevailing wage determination issued by the Department of Labor as detailed in the procurement solicitation.

As set forth in more detail in 29 C.F.R. 5.5(a)(3), below, Contractor shall be responsible for:

- Produce and submit payrolls and basic records relating thereto for all laborers and mechanics working at the site of the work (including covered workers employed by Contractor and all subcontractors) during the course of the work;
- preserving the payrolls and basic records relating thereto for a period of three years thereafter;
- submitting a copy of all payrolls to Owner weekly for each week in which any contract work is performed, using Form WH-347 (available on the Wage and Hour Division Web site), including the Statement of Compliance set forth on the reverse side of Form WH-347, signed by the Contractor or its agent (or the subcontractor or its agent) who pays or supervises the payment of the persons employed under the contract; and
- making the required records described above available for inspection, copying, or transcription by authorized representatives of the Texas Education Agency, U.S. Department of Education, and/or the Department of Labor, and permitting such representatives to interview employees during working hours on the job.

§ 8.10.11.2 As required by 29 C.F.R. § 5.5(a), the following statements are included (as used in this section, the term "contractor" includes Contractor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Texas Education Agency/U.S. Department of Education may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Texas Education Agency/U.S. Department of Education if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Texas Education Agency/U.S. Department of Education, as may be required. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Texas Education Agency/U.S. Department of Education if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the Texas Education Agency/U.S. Department of Education, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing

wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Texas Education Agency/U.S. Department of Education or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator

determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Texas Education Agency/U.S. Department of Education may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

§ 8.10.11.2 As required by 29 C.F.R. § 5.5(b), the following statements are included. As used in this section, the terms laborers and mechanics include watchmen and guards, and the term "contractor" includes the Contractor.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the conract [sic] work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Port Arthur Independent School District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

§ 9.1 This Agreement is comprised of the following documents; in the event of any inconsistency or conflict between or among the documents that comprise this Agreement, the order of precedence shall be:

.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

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner for the project

.5 Drawings

Number	Title	Date
TBD		

.6 Specifications

Section	Title	Date	Pages
TBD			

.7 Addenda, if any:

Number	Date	Pages
TBD		

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.)

.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, including Contractor's completed Vendor Packet, including, but not limited to, the certifications contained therein, expressly including the certifications stemming from 2 CFR Part 200
.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 Portion(s) of Contractor's responses and proposals to Owner's competitive procurement solicitation documents that were accepted by Owner.

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

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
Dr. Shannon Allen Superintendent of Schools	« TBD »« »
(Printed name and title)	*(Printed name and title)*