Issue Date: June 15, 2025
Page 1 of 192 plus Excel Workbook Price Offer
Summary : **RFP # 208053**
Construction Manager at Risk (CMAR) Services For Career Institute East – Historic Lincoln Building - Renovation
[**X**] Request for Proposal

Solicitation Receipt/Opening Time and Date:

July 16, 2025, 2:00 PM Central Time

Michelle Herrera
Michelle Herrera, Buyer – Construction Procurement Services

Dallas Independent School District ("Dallas ISD" or "District" or "DISD") is soliciting Request for Proposals in a One-Step process for Construction Manager at Risk services as outlined in this solicitation document. Sealed Statements of Qualifications and Price Proposals must be submitted in a sealed envelope marked on the outside with the Offeror's name and address and solicitation number and title, RFP # 208053 Construction Manager at Risk (CMAR) Services for Career Institute East - Historic Lincoln Building - Renovation project to: Dallas ISD Attn: Michelle Herrera, Procurement Services, 9400 N. Central Expressway Suite 800 Dallas, TX 75231.

Responses to this One-Step CMAR Solicitation must be submitted in sufficient time to be received and time-stamped at the above location on or before the receipt/opening date/time indicated above. DALLAS ISD will not be responsible for delivering mail from the post office nor for any other delays encountered by hand delivery of qualifications. Qualification and proposal packages received after the receipt/opening time and date may not be considered. FAX proposals or e-mailed proposals will not be accepted.

Questions concerning this solicitation document must be addressed, in writing, to **ProcurementCS@dallasisd.org** . **Questions should be submitted not later than July 2th, 2025, by the end of the business** day to allow sufficient time for responses prior to receipt/opening date/time. Responses to questions, other than administrative questions, will be provided to all potential Offerors by means of an addendum to the solicitation. This solicitation is for a one-time purchase.

The attached "Contract Documents" are an integral part of this solicitation and will become part of any resulting contract unless deviations/exceptions are requested by Offeror at the time questions are submitted to Dallas ISD. The RFP addenda process will be used to address any proposed changes to the issued Contract Documents that are acceptable to DISD. Once the district issues an addendum, no further negotiated changes to the contract documents will be accepted by DISD. The Offerors are required to submit a signed copy of the CMAR agreement documents at the time they submit their response to this solicitation. This is intended to expedite the contract award process once the DISD Board approves the recommended CMAR.

Please return the original signed submittal, one (1) copy and 1 soft copy on a USB or flash/thumb drive to Dallas ISD, Attn: Michelle Herrera, Procurement Services. All forms included as part of this solicitation must be completed and returned with Offeror's response.

Contract(s) will be put into effect by means of a Letter of Acceptance, or some other written notification of Acceptance by The District, within ten (10) days of approval by the District's Board of Trustees. The document of Acceptance, the solicitation, the Offeror's submittal, and other pertinent documents will comprise the Contract Documents. See "Contract Documents and Order of Precedence" in General Terms and Conditions.

Signature below represents that Offer is submitted. **OFFER MUST BE SIGNED**

Company Name: _____ Submitter's Name/Title: _____

Address: _____ City, State and Zip Code: _____

Email Address: _____ Telephone No. _____

Submitter's Signature: _____ Date: _____

STATEMENT OF WORK
Solicitation Number: RFP # 208053
Solicitation Title: Construction Manager at Risk (CMAR) Services For Career Institute East – Historic Lincoln Building - Renovation
RFP One-Step Procurement Process

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V. General Terms and Conditions

VI. Special Terms and Conditions (if applicable)

VII. Exhibits and/or Appendices (if applicable)

Solicitation Timeline (as of 09/27/2023)

Issue RFQ/RFP	06/15/2025
Bid Ad 1	06/15/2025
Bid Ad 2	06/22/2025
Preproposal Meeting	06/25/2025 1:00 PM CST
Question Deadline	07/02/2025 5:00 PM CST
Final Addenda Deadline	07/08/2025 5:00 PM CST
RFQ/RFP Response Due Date	07/16/2025 2:00 PM CST
RFP Evaluation	07/21/2025
Board Agenda	09/25/2025

***Pre-Proposal Meeting**

A pre-proposal meeting will be held at 1:00 PM Local time on Thursday, June 25, 20225, via Ms Teams.
Microsoft Teams:
Meeting ID: **214 329 691 174 9**
Passcode: **dB374Hf2**

Please submit (in writing) any questions regarding this RFP to Email, ProcurementCS@dallasisd.org. Only written questions will be considered. It is highly encouraged that all potential proposers participate and attend the pre-proposal.

Cut along the outer border and affix this label to your sealed RFP envelope to identify it as a "Sealed RFP". Be sure to include the name of the company submitting the RFP where requested.

SEALED RFP DO NOT OPEN

RFP NO.: **RFP # 208053**

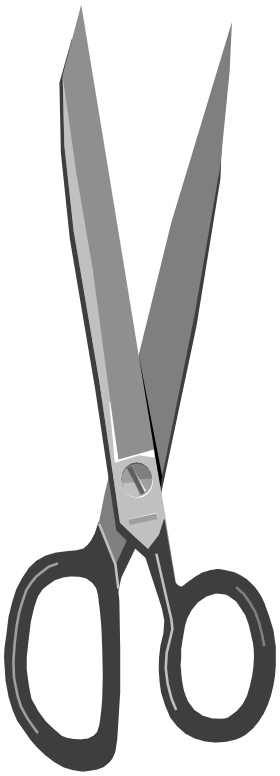
RFP TITLE: **Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation**

DUE DATE/TIME: **July 16, 2025th @ 2:00 p.m. CST**

SUBMITTED BY:

DELIVER TO:

PROCUREMENT SERVICES
9400 N. CENTRAL EXPWY
SUITE #800
Dallas, TX 75231



Please Note: ***** This solicitation** is **available for download at the following link: https://www.dallasisd.org/Page/1275 . Any addendum corresponding to this solicitation will also be posted at this webpage. *****

However, if you obtain our RFP documents from any other source, we cannot guarantee that you will automatically receive subsequent notifications of addendums by email. In order to ensure that you are automatically notified, you must visit the above websites and open and view the RFP document. The district will not be responsible if you fail to receive all addendums if you obtain the original RFP document from another source.

SECTION I: BACKGROUND INFORMATION/BASIC REQUIREMENTS

1. Dallas ISD is seeking sealed statements of qualifications and proposals for Construction Manager at Risk Services (CMAR) for Career Institute Ease – Historic Lincoln Building - Renovation.

2. Dallas ISD is seeking to award one vendor for the purchase of the goods/services identified in this solicitation.

3. The resulting Contract award, if any, is for a one-time requirement.

4. The **Effective Date** of the Contract/Agreement, if any, is the date that the award is approved by Dallas ISD's Board of Trustees or designated representative.

5. Dallas ISD sits in the heart of a large, diverse, and dynamic region with a metropolitan population of 6.5 million people in the 12 counties in North Central Texas. Dallas ISD comprises 384 square miles and encompasses the cities of Dallas, Cockrell Hill, Seagoville, Addison, Wilmer, and parts of Carrollton, Cedar Hill, DeSoto, Duncanville, Farmers Branch, Garland, Grand Prairie, Highland Park, Hutchins, Lancaster, and Mesquite.

    a. The district is the second-largest public school district in the state and the 14th-largest district in the nation.
    b. Dallas ISD is proud of its award-winning schools, outstanding teachers and staff, hard-working students, and committed parents and volunteers. The district serves approximately 140,000 students in pre-kindergarten through the 12th grade, in 240 schools, employing nearly 22,000 dedicated professionals.

6. **Project Information**
   Pursuant to the provisions of Texas Government Code Chapter 2269, Subchapter F, it is the intention of the Dallas Independent School District (the "District" or "Owner") to select, via the one-step procurement process, a Construction Manager-at-Risk ("CMAR") firm for Career Institute Ease - Historic Lincoln Building - Renovation project within the 2020 Bond Program as generally described in this Solicitation.

DISD's Evaluation Committee will evaluate and rank each proposal submission in relation to the selection criteria set forth herein. DISD plans to conduct a pre-proposal conference prior to the submittal deadline to acquaint vendors with the CMAR process, SBE participation, and particular requirements of this RFP Solicitation.

Upon review and ranking of the individual statements of qualifications and the price proposal submitted, the district will then select the successful proposal based on the published evaluation criteria including but not limited to the project-specific qualifications and total proposed costs for preconstruction, general requirements/general conditions as determined to provide the "best value" to the district.

Project Site
Career Institute East - Historic Lincoln Building
5000 S. Malcolm X Boulevard
Dallas, Texas 75215

Program Management Firm

Dikita Enterprise -Dallas ISD Construction
Services 9400 N. Central Expwy
Dallas, TX 75231

Architect
Corgan Associates, Inc.
401 N. Houston St.
Dallas, TX 75202
214-757-1626

Project Scope

- Construct a Renovation with at total square footage of approximately 75,000 square feet.
- Demolition and Abatement
- Administration offices and Classroom renovations
- Kitchen
- Cafeteria
- New Lecture Hall
- Full MEP upgrade
- Network, AV, Security, and Secure entry
- Restroom upgrades
- New finishes (including flooring, paint, wall tile, etc.) throughout building
- Landscaping
- Exterior improvements
- Utilities
- Fire Suppression
- Project duration 14 months

Total Estimated Construction Cost: $27,630,842

Section II: INSTRUCTIONS AND REQUIREMENTS for STATEMENT OF QUALIFICATIONS SUBMITTAL

Offeror shall furnish to the district, all such information and data requested by the district to determine the Offeror's qualifications and responsibility. The requested information must be placed on the forms provided or other separate pages where indicated--do not refer to other documents. All answers must be complete and stand-alone. Failure to follow directions using the outline below or not using the forms attached may result in the Offeror's submittal being disqualified or not considered for further evaluation.

Offerors shall familiarize themselves with existing conditions in the material and labor markets prior to the submission of an offer. The fact that an Offer (bid/proposal) is submitted will be construed by the district to indicate that the Offeror has familiarized itself with existing or future market conditions and agrees to perform in full accordance with the specifications and other contract documents notwithstanding existing material and labor markets' conditions.

Offeror must comply with any insurance, bid bond, or liability requirements of the District as noted elsewhere in this solicitation document.

Offeror must include pertinent literature/documentation for the proposed products or goods.

If Offeror requires a credit application or similar documentation in order to conduct business with Dallas ISD after the award of the Contract/Agreement (if any), these documents must be submitted at the time of Offer submission.

In addition to a detailed response to the solicitation, the following forms must be completed, executed, and returned with the Offer:

- Company Information
- Representation and Certification (including CIQ)
- Form CIQ *
- Certificate of Interested Parties Form 1295 *
- Felony Conviction Notice
- Notification of no Response
- Excel Workbook Price Offer Summary
- Exceptions to Terms, Conditions, and/or Statement of Work
- W-9
- Criminal Background Checks and Badging
- SBE Documentation **
- Other Questions/Responses (if applicable)

* Form CIQ and Form 1295 must be obtained by potential Offerors from the Texas Ethics Commission's website (www.ethics.state.tx.us), completed, and returned with the Offer.

** **Failure to complete and sign the SBE documentation will result in Offeror receiving zero (0) points for the SBE criteria.**

SOQ REQUIRED SUBMISSION OUTLINE:

Submit one (1) original and one (1) copy of your proposal. In addition, vendors shall supply one (1) soft copy (electronic) preferably on a USB/flash drive. An original signature must appear on the Offer Form of the original copy submitted.

Responses must be typed or printed on letter-size (8-1/2" x 11") paper. Owner requests that responses be submitted in a binder. Sections should be divided by tabs as described by the SOQ Required Submission Outline listed herein. Any responses greater than 25 individual pages may be subject to a reduction in evaluation points. A page is defined for this paragraph as a single sheet or fold-out sheet with printing or graphics on one or both sides. The following items do not count toward the 25 individual page limit: District required forms, resumes, tabs, covers, and table of contents.

SOQ REQUIRED SUBMISSION OUTLINE:

Tab 1: Introduction
Tab 2: Firm Profile
Tab 3: Qualifications for K12 CMAR Projects
Tab 4: Relevant Experience
Tab 5: Management Methods
Tab 6: Project Controls
Tab 7: Methodology – Pre-Construction Services
Tab 8: Methodology – Construction Services
Tab 9: SBE Participation
Tab 10: Required Forms

TAB 1: INTRODUCTION

A. Provide a statement of interest including a narrative describing the respondent's unique qualifications and experiences as they pertain to high school Addition and Renovation on occupied campuses.

TAB 2: FIRM PROFILE

A. Provide the following information: company name, company address, telephone number, email address, name of primary contact, and Type of Organization (Individual, Partnership, Corporation, Association).

B. If the firm has more than one office, provide specific information about the parent company and administering branch office.

C. Number of years in business (under the submitted name) and number of years operating within the Dallas-Fort Worth Area.

D. Provide proof of available bonding capacity.

E. Provide details of any past or pending litigation or claims filed against your firm in the past five (5) years that may affect your performance under a Contract with the Owner. If this is not applicable, please respond accordingly.

F. Identify if your firm is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If so, specify date(s), details, circumstances, and prospects for resolution. If this is not applicable, please respond accordingly.

TAB 3: QUALIFICATIONS FOR K12 CMAR PROJECTS

A. Describe your day to day management strategy for the Construction Manager at Risk construction delivery method as it pertains to the Career Institute East - Historic Lincoln Building - Renovation.

B. Provide resumes of the Construction Manager at Risk team that will be directly involved in the Project, including their experience with CMAR for similar scope and size of project and the number of years of related experience. At a minimum, the resumes of the proposed project manager, project superintendent, project engineer, and project cost estimator shall be included.

C. Describe, in graphic and written form, the proposed Project assignments, and lines of authority, for each team member that is directly involved in the Project. Indicate the estimated percentage of time these team members will be involved in the Project for pre-construction and construction services. Individuals proposed for the construction team must remain for the entire duration of the project.

TAB 4: RELEVANT EXPERIENCE

PAST PERFORMANCE ON CM AT RISK PROJECTS & REFERENCES

A. Identify and describe the proposed Team's experience for providing Construction Manager-at-Risk Services on school addition and renovation projects on occupied campuses. Provide a minimum of five (5) completed projects in the last 5 years. Provide the following information for each project listed:

- Project name, location, description, original budget, photographs, and final project size in Square Feet
- Type of construction (new, renovation, or expansion)
- When the GMP was established (i.e. – 50% CDs, etc.)
- Original construction cost | Final construction cost
- Any incentives for finishing within established budget
- Number of Change Orders – if there were change orders, please describe the details associated with why change orders were required.
- Original substantial completion date | Actual substantial completion date
- Any incentives for completion prior to contractual Substantial Completion
- References (for each project listed above, identify the following):
- The Owner's and Architects name and representative who served as the day-today liaison during the design and construction phases of the project, including telephone number and email address (references will be contacted via email address). Please advise your firm's references that we will be contacting them within one (day) of receiving SOQs.
- Length of business relationship with the Owner.
- Please ensure references and contact information are accurate and up to date. Non-responsive references outside the predetermined window will render a score of zero.

References are considered relevant based on specific project participation and experience with the Respondent. The Owner may contact references during any part of this process. The Owner reserves the right to contact any other references at any time during the RFP process.

TAB 5: MANAGEMENT METHODS

A. Provide information on current project backlog, include project(s) value.

B. Describe your approach to working on an occupied campus and how your firm will complete the work without affecting the instructional learning of the students.

C. Provide your Safety Plan and a list of all safety personnel and resources within your firm's Safety Program and the time each resource is assigned to this project. Briefly describe the firm's approach to anticipating, recognizing, and mitigating safety risks. Include information on how the firm manages all safety documentation, reports, and corrective actions.

D. Describe your firm's approach to evaluating the safety and insurance/claim history of the subcontractors as a part of the process for awarding "best value" subcontracts.

E. Describe your firm's approach to qualifying subcontractors as a part of the process for awarding "best value" subcontracts.

F. Describe your firms' approach to warranty service for this project and provide examples of warranty best practices used on related K-12 projects.

G. Describe your quality assurance program. Explain the methods used to ensure quality control during the Pre-Construction and Construction phases of the project.

H. Describe how your quality control team will measure the quality of construction performed by specialty subcontractors, and how you will address non-conforming work.

TAB 6: PROJECT CONTROLS

A. Describe your cost control methods during pre-construction and construction phases.

B. Provide the type of scheduling software your firm is proposing to use on this project. Describe your approach to assuring timely completion, including methods used for schedule recovery. Describe strategies for meeting or improving schedules for design and/or construction.

C. Describe your firm's process for managing buyout throughout the construction project and how you keep the owner informed with where the project stands with buyout.

TAB 7: METHODOLOGY – PRE-CONSTRUCTION SERVICES

A. Describe your construction management and execution plan for providing pre-construction services required for this Project.

B. Describe your procedures and objectives for providing feedback regarding cost, schedule and constructability to the A/E and the Owner throughout the design/value engineering process.

C. Provide examples of records, reports, estimates, monitoring systems, and information management systems you will use during pre-construction services.

D. Describe your strategy to create and maintain interest, feedback, and support from potential subcontractors, vendors, and suppliers prior to solicitation and bidding. Especially attracting qualified, experienced, and/or HUB subcontractors. Describe your methodology for evaluating and selecting trade contractors.

E. Refer to Exhibit A for details.

TAB 8: METHODOLOGY – CONSTRUCTION SERVICES

A. Describe your construction management and execution plan for providing construction services.

B. Describe strategies on how you establish and maintain project controls and administration (i.e., subcontractor contracts/billings and CMAR billings) during the construction phase. Provide examples of records, reports, monitoring systems, and information management systems you will use during the construction phase. Describe how you plan to manage redline/as-built drawings, obtain inspections/green tags, training, punch lists, project closeout, MEP startup, commissioning systems, and final payment.

C. Describe if you intend to utilize virtual construction during the execution of the project, and how it has been implemented in previous similar type projects.

D. Refer to Exhibit A for details.

TAB 9: SBE PARTICIPATION

A. Provide completed and signed original and one (1) copy of the Dallas ISD SBE Guidelines and Forms Construction Manager at Risk CMAR with your RFP sealed submittal package.

TAB 10: FORMS

A. Insert all required forms in this section of the response.

Section III: EVALUATION PROCESS

1. **Overview.** Each Submittal received will be analyzed and evaluated by selected District personnel and the Architect of Record for the Career Institute East - Historic Lincoln Building - Renovation project.
   a. It is the intent of the district to award based on the best value (i.e., price and other factors considered) to the district to the responsive, qualified, and responsible Offeror as statutes, regulations, policies, and practices allow.
   b. While award to a single Proposer is envisioned, the district reserves the right, at the district's sole discretion, to make multiple awards or no award, if determined to be in the district's best interests.
   c. Non-responsive or disqualified Offers will be not eligible for award consideration. Reasons for being deemed non-responsive or being disqualified include, but are not limited to, receipt of Offer after date/time posted; failure to sign the Offer; being debarred; and/or excessive exceptions to statement of work or terms and conditions.

2. **Evaluation Criteria.** In addition to the evaluation criteria noted in the General Terms and Conditions, the District will use the following criteria in this evaluation, and pursuant to the provisions of Texas Government Code §2269, Subchapter F, the following Evaluation criteria are considerations which shall be reviewed to determine the best value for the district.

CONSTRUCTION MANAGER AT RISK
RFP # 208053 - One-Step Procurement - Evaluation Criteria

Criteria	Points	Explanation of Criteria
QUALITATIVE CRITERIA		
Best Value Price Proposal as Evaluated by DISD Review Team	**40**	The overall Best Value will be determined by evaluating all of the following: • The total proposed CM Fee which will be converted to a percentage of Reimbursable Cost of Work. • The total estimated reimbursable net costs of furnishing the required Performance and Payment prior to any dividend that the CM may receive after the end of the project. Note: The amount is subject to the contractual max in the DISD RFP and contract. • The total proposed maximum reimbursable costs to provide all the DISD contractually required liability insurance coverage using conventional liability insurance policies carried by the CM. Note: The amount is subject to the contractual max in the DISD RFP and contract. • The total proposed maximum cost of Builder's Risk Insurance proposed by CM. • The total overall proposed cost of Performance and Payment Bond, Liability Insurance, Builder's Risk Insurance and CM Fee.
Overall Qualifications for K-12 CMAR Projects including Experience of Proposed Key Members of CMAR Team, Project Leadership, Safety Record, Financial Resources, Stability, bonding capacity, mediation, arbitration, litigation history	**30**	• Overall Qualifications for K-12 CMAR Projects • Experience of Proposed Key Members of CMAR Team • Project Leadership, • Financial Resources • Stability, Bonding Capacity, • Mediation, Arbitration& Litigation history
Safety Record	**5**	• Safety Plan
Vendor Past Relationship with the District	**5**	• Rated based on Past Performance, Quality, Compliance with Terms & Regulations
SBE Participation	**20**	CMAR SBE Guidelines and Forms

Selection Process: THIS IS A NEGOTIATED PROCUREMENT, and as such, an award will not necessarily be made to the Proposer submitting the lowest fee/cost Proposal. The selection committee may select all, some, or none of the Proposers for interviews. The district may also request additional information from Proposers at any time prior to the final approval of a selected Proposer. The interview, if any, will not be scored separately

SECTION IV: FORMS TO BE RETURNED WITH OFFER

The following attached forms must be completed and returned with Offer:

[ ] Offer Form
[ ] Company Information
[ ] Representation and Certification (including CIQ)
[ ] Form CIQ *
[ ] Certificate of Interested Parties Form 1295*
[ ] Felony Conviction Notice
[ ] Notification of No Response
[ ] Excel Workbook Price Offer Summary
[ ] Exceptions to Terms, Conditions, and/or Statement of Work
[ ] W-9
[ ] Criminal Background Checks and Badging
[ ] SBE Documentation** Provided under separate cover but incorporated by reference.
[ ] Other Questions/Responses (if applicable)

* Form CIQ and Form 1295 must be obtained by potential Offerors from the Texas Ethics Commission's website (www.ethics.state.tx.us), completed, and returned with Offer.

** **Failure to complete and sign the SBE documentation will result in Offeror receiving zero (0) points for the SBE criteria.**

The following information is provided to assist in completion of the attached forms:

The Officers and Board Members of Dallas ISD are:

Stephanie Elizalde	Superintendent
Justin Henry	Board President
Dan Micciche	Board Member
Ed Turner	Board Member
Sarah Weinberg	Board Member
Lance Currie	Board Member
Joe Carreón	Board Member
Prisma Garcia	Board Member
Joyce Forman	Board Member
Ben Mackey	Board Member
Byron Sanders	Board Member

Solicitation Number: RFP # 208053
Solicitation Title: Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation
RFP One-Step Procurement Process

Company Information Form

Name of firm making Offer:	
Address:	
City/State/Zip:	
E-mail Address:	
Telephone:	( )
Toll free number:	( )
Fax number:	( )
Point of contact:	
Business days/hours:	
No. years in business under this name:	
No. years at present location:	
No. personnel (non-clerical) employed:	
No. of clerical personnel employed:	
Bank Reference Contact:	
Bank Reference Phone Number:	

Company Name:_____ Submitter's Name/Title:_____

Address:_____City, State and Zip Code:_____

Email Address: _____

Submitter's Signature:_____Telephone No._____

Fax No._____800 # (if available)_____

Date:_____

REPRESENTATION AND CERTIFICATION

By submitting this Offer, the Offeror certifies that he/she is a responsible authorized officer of the company and certifies the accuracy of the following statements:

1. Represents that to the best of its knowledge it is not indebted to the district. **Indebtedness** to the District shall be basis for non-award and/or cancellation and/or termination of any award.
2. By signing this bid/proposal, vendor makes the assurance that vendor has not been debarred or suspended from conducting business with the US Government according to Executive Order 12549 entitled "**Debarment and Suspension**."
3. Pursuant to the Texas Education Code, Subchapter B, Section 44.034, "**Notification of Criminal History**", a person or business entity that enters into a contract with a school district must give advance notice to the district if the person and/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 district may terminate a contract with a person or business entity if the district 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 district must compensate the person or business entity for services performed before the termination of the contract." Subsection (c) this notice is not required of a publicly held corporation.
   1.___My firm is a publicly held corporation, therefore, this reporting requirement is not applicable.
   2.___My firm is not owned nor operated by anyone who has been convicted of a felony.
   3.___My firm 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):_____

4. "**Non-Collusion Statement**" and "**Anti-Lobbying Certification**": "The undersigned affirms that they are duly authorized to execute this Representation and Certification, Offer, and/or Contract and that this company, corporation, firm, partnership, etc., or individual has not prepared this bid in collusion (*An agreement between two or more persons to deceive the school district or defraud the school district of its rights*) with any other bidder, school board member, or school district employee, and that the contents of this bid as to prices, quality of product, terms and/or conditions, etc., have not been communicated by the undersigned nor by any other employee, agent and/or representative of the company, corporation, firm, partnership, etc., or individual to any other person engaged in this type of business prior to the official opening of this bid for the intent or purpose of collusion." In accordance with Title 31, USC Section 1352, no attempt has been or will be made by this company's officers, employees, or agents to lobby, directly or indirectly, with the District's Board of Trustees between bid/proposal submission date and award by the Board.

5. The district promotes, to the maximum extent allowed by law, participation by **economically disadvantaged business enterprises** in all District competitive procurement. Are you a qualified economically disadvantaged business enterprise, historically underutilized business, or minority/women owned business enterprise?
   (Check one) _____ Yes _____ No
   Type of Certification: _____
   Issued by: _____ **Date of Issue:** _____
   Please attach proof of certification to this submittal. **Certified by:** _____

6. "**Conflict of Interest**": No officer, agent, or stockholder of the Offeror is a member of the staff or related to any employee of the district except as noted herein:
   _____.
   Texas Statute enacts disclosure requirements if certain school officials or family members receive a gift (other than gifts of food, lodging, transportation, or entertainment accepted as a guest) that had an aggregate value of $250 or more over a twelve-month period that the district is considering or has awarded a contract for the sale or purchase of property, goods, or services. Has your firm, parent firm, subsidiary, and/or affiliate provided a gift (other than gifts of food, lodging, transportation, or entertainment accepted as a guest) that had an aggregate value of $250 or more over a twelve-month period to any District official, administrator, and/or Board member? [ ] Yes [ ] No
   If yes, explain (the gift, name of individual receiving gift, date gift was provided, etc.).
   _____ **(COMPLETE THE ATTACHED QUESTIONNAIRE FORM)**

7. Offeror agrees to the attached "**General Terms and Conditions**" and any "**Special Terms and Conditions**" (if applicable) of this solicitation and in case of conflict with other documents provided by Offeror, these General and/or Special Terms and Conditions take precedence and prevail unless specifically identified and changes are signed by both parties.

8. "**Insurance, Bonds**": Insurance and/or bond requirements are enumerated elsewhere in Contract documents. Submission of a certificate of insurance/bond by the undersigned (or an agent/broker on behalf of the undersigned) represents that the coverages and perils covered by the insurance/bond meet or exceed the requirements of the solicitation document and/or subsequent contract. The district may make reasonable reliance on the submitted certificate of insurance/bond. The certificate of insurance/bond must accurately reflect the policy coverages and will become a part of the Contract Documents and incorporated by reference, but the Contract terms/conditions and statement of work take precedence over any and all contents of the certificate of insurance/bond including, but not limited to, disclaimers, qualifications, etc. Failure to provide insurance/bond in accordance with Contract may be cause for termination for default and other remedies allowed by law and/or equity. Offeror must notify the district entity, in writing, by certified mail or personal delivery, within ten days after the vendor knew or should have known of any changes that materially affects the insurance/bond coverage.

9. "**Workers Compensation**": Offeror acknowledges that the District will NOT provide Workers Compensation coverage to the Offeror and Offeror represents to the District that all employees, subcontractors, agents, representatives, etc. of the Offeror who will provide products, goods, or services to the District will be covered by worker's compensation coverage for the duration of the Contract, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

10. "**Criminal Background Checks/Searches**": Offeror represents that criminal background checks/searches have been conducted (or will be conducted prior to start of Work if required) in accordance with the General Terms and Conditions (Criminal Background Check) and "Instructions to School District Contractors Regarding Criminal History Background Searches Under Texas Education Code (TEC) 22.0834" (attached).

11. **"No Boycott of Israel".** Offeror certifies that it (and any of its affiliates or parent company), does not, and will not, boycott Israel during the term of any contractual arrangement with DALLAS ISD. For purposes of any contractual arrangement with DALLAS ISD, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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

13. **"Transactions with an Abortion Provider or Affiliate".** Offeror certifies that it is not an abortion provider nor an affiliate of such a provider as noted in Texas SB 22, codified in Texas Government Code Chapter 2272, and effective September 1, 2019. If this provision is violated by Offeror, Agreement and/or taxpayer resource transaction is voidable by Dallas ISD and Offeror agrees to defend and indemnify Dallas ISD against any action brought by the Office of the Attorney General for a violation of Section 2272.003.

I, the undersigned officer, or authorized agent for the firm named below, certify that the information provided herein has been reviewed by me and is true to the best of my knowledge.

Company Name: _____ **Submitter's Name/Title:** _____

Email Address: _____

Submitter's Signature: _____ **Telephone No.** _____

Address: _____ **City, State and Zip Code:** _____

Fax No. _____ **Date:** _____

THIS SHEET MUST BE COMPLETED, SIGNED, AND RETURNED WITH FIRM'S OFFER.

Notice to Offerors
Conflict of Interest Disclosure Statements
Texas Local Government Code, Chapter 176

Offerors are required to file a Conflict of Interest Questionnaire with the District if a relationship exists between the Offeror's company and an officer of the District. Offerors are encouraged to review and become familiar with all disclosure requirements of Texas Local Government Code, Chapter 176. Conflicts of interest exist if:

1. the person has employment or other business relationship with the local government officer or a family member resulting in the officer or family member receiving taxable income; or
2. the person has given the local government officer or family member one or more gifts (excluding food, lodging, transportation, and entertainment) that have an aggregate value of more than $250 in the twelve-month period preceding.
3. the date the officer becomes aware of an executed contract or consideration of the person for a contract to do business with the District.

Disclosure is required from Offerors regarding each affiliation or business relationship between the Offeror and:

1. an officer of the District;
2. an officer of the District that results in the officer or family member receiving taxable income;
3. an officer of the District that results in the Offeror receiving taxable income that does not come from the District;
4. a corporation or other business entity in which an officer of the District serves as an officer or director, or holds an ownership interest of 10% or more;
5. an employee or Offeror of the District who makes recommendations to an officer of the District regarding the expenditure of money;
6. an officer of the District who appoints or employs an officer of the District that is the subject of the questionnaire; and
7. any person or entity that might cause a conflict of interest with the District.

If a conflict exists, forms must be filed:

1. No later than the seventh business day after the date that the person begins contract discussions or negotiations with the government entity, or submits to the entity an application, response to a request for qualification or bid, correspondence, or other writing related to a potential agreement with the entity.

2. The Offeror also shall file an updated questionnaire:
   a. not later than September 1 of each year in which a covered transaction is pending, and
   b. the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

3. An Offeror is not required to file an updated questionnaire if the person had filed an updated statement on or after June 1, but before September 1 of the year.

Officers of the Dallas Independent School District are:

Lance Currie (District 1)
Sarah Weinberg (District 2)
Dan Micciche (District 3)
Prisma Y. Garcia (District 4)
Byron Sanders (District 5)
Joyce Foreman (District 6)
Ben Mackey (District 7)
Joe Carreon (District 8)
Ed Turner (District 9)
Stephanie Elizalde, Ed.D. Superintendent of Schools

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.

If you are required to file, send the completed form to Dallas Independent School District, Procurement Services Department, 9400 North Central Expressway, Suite 800, Dallas, Texas 75231

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 **Name of vendor who has a business relationship with local governmental entity.**

2 ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 **Name of local government officer about whom the information is being disclosed.**

_____

Name of Officer

4 **Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 **Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

_____ _____

Signature of vendor doing business with the governmental entity Date

Form provided by Texas Ethics Commission www.ethics.state.tx.us Revised 1/1/2021

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 of a family relationship with a local government officer.

Solicitation Number: RFP # 208053
Solicitation Title: Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation

RFP One-Step Procurement Process

Dallas ISD 9400 N. Central Expressway Suite 800 Dallas, TX 75231

FELONY CONVICTION NOTICE

Statutory citation covering notification of criminal history of the contractor is found in the Texas Education Code #44.034. Following is an example of a felony conviction notice:

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 district must give advance notice to the district 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 district may terminate a contract with a person or business entity if the district 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 district 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 firm 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.

A. [ ] my firm is a publicly held corporation, therefore, this reporting requirement is not applicable.

B. [ ] my firm is not owned nor operated by anyone who has been convicted of a felony:

C. [ ] My firm 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): _____

_____

Company Name:_____ Submitter's Name/Title:_____

Address:_____City, State and Zip Code:_____

Email Address: _____

Submitter's Signature:_____Telephone No._____

Fax No._____800 # (if available)_____

Date:_____

Solicitation Number: RFP # 208053
Solicitation Title: Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation

RFP One-Step Procurement Process

IDENTIFICATION BADGE(S)

1. Identification Badge: Offeror's employees, agents, and consultants and subcontractors, subject to the criminal history record review requirement shall be identified by a photographic identification badge.

2. If the Offeror is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review and must submit original evidence acceptable to the District with this Agreement showing compliance.

3. Pursuant to Dallas ISD's Board Policy CJA (LOCAL) Purchasing and Acquisition:

   All contracts must comply with the requirements for criminal background checks. All vendors must give advance notice to the district 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. The district may terminate any resulting agreement if the district determines that the person or business entity failed to provide notice as required by this paragraph or misrepresented the conduct resulting in the conviction.

4. The above requirement is required for all suppliers who will provide a service to Dallas ISD and will be on District property. The background checks and badges must be done through the supplier's company or the district's third-party provider, FC Background at:
   - Visit **www.fcbackground.com/clientsignup/** *(Internet Explorer 5.0 or higher required)*
   - Enter your Project Pass Code: **DI20SC21**

Company Name:_____ Submitter's Name/Title:_____

Address:_____City, State and Zip Code:_____

Email Address: _____

Submitter's Signature:_____Telephone No._____

Fax No._____800 # (if available)_____

Date:_____

Instructions to School District Contractors
Regarding Criminal History Background Searches
Under TEC 22.0835

TEC 22.0834 directs school district contractors (i.e., Company) to obtain state and national criminal history background searches on their employees who will have direct contact with students, and to receive those results through the DPS criminal history clearinghouse (Fingerprint-based Applicant Clearinghouse of Texas –FACT). In order for contractors to receive the information through FACT, they must first establish an account with the DPS for FACT clearinghouse access. The Company owner must sign a user agreement with the DPS. To obtain the user agreement and more information, Company must contact:

Access and Dissemination Bureau
Texas Department of Public Safety
Crime Records Service
P. O. Box 149322
Austin, Texas 78714-9322

Email: FACT@txdps.state.tx.us
Phone: (512) 424-2365

For fastest service, please email or call. State in the message that Company is a school district contractor and needs to have an account established for DPS FACT clearinghouse access. Please include:

Company Name
Company Address
Company Phone
Name of Company point of contact
Phone of Company point of contact
Company email to be used for notification of FACT records and messages

The information in the DPS FACT Clearinghouse is confidential, and access must be restricted to the least number of persons needed to review the records. The account must include at least one designated supervisor to make necessary changes and to monitor the site's security and access to the criminal history data retrieved. Additional users must be limited to those who need to request, retrieve, or evaluate data regarding individual applicants.

PLEASE NOTE: After the Company signs the DPS User Agreement for FACT, DPS will provide the Company with a revised ***FAST Fingerprint Pass*** that Company will have to provide to its employees and applicants. The company's employees and applicants will use that ***FAST Fingerprint Pass*** when scheduling their FAST fingerprinting.

Company Name:_____ Submitter's Name/Title:_____

Address:_____City, State and Zip Code:_____

Email Address: _____

Submitter's Signature:_____Telephone No._____

Fax No._____800 # (if available)_____

Date:_____

NOTIFICATION OF NO RESPONSE

RFP # 208053 - One-Step Procurement Process
Construction Manager at Risk (CMAR) Services for Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation
RFP One-Step Procurement Process
Dallas ISD Bond/Construction Services
9400 N. Central Expressway Suite 800
Dallas, Texas 75231

If applicable, please sign and return this form to the attention of:

Michelle Herrera, Procurement Services
(To the above address)

Dallas ISD would appreciate receiving this notification to better utilize our resources in corresponding with potential Offerors throughout the solicitation process.

After a review of **RFP # 208053 Construction Manager at Risk (CMAR) Services for Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation,** it is decided that there would not be a response to the request for proposal. The decision is based upon one or more reasons checked below.

1. Unable to meet specifications for (check all that apply):
   - Offeror qualifications _____
   - Insurance Coverage required _____
   - Timeline _____
2. Unable to utilize desired markets _____
3. Able to, but just prefer not to respond _____
4. Other: _____

Please explain _____

Any elaboration to the above is appreciated. Dallas ISD wants to receive feedback to consider for future solicitations. Please use the space below to share your comments.

_____

_____

_____

_____ ( ) _____ ( ) _____

Company (Print) ***Phone*** ***Fax***

_____ _____

Signature in ink **Date**

_____

Printed Name & Title of Signature

Solicitation Number: RFP # 208053
Solicitation Title: Construction Manager at Risk (CMAR) Services for Career Institute East – Historic Lincoln Building - Renovation
RFP One-Step Procurement Process

RFP One-Step Procurement Process

Deviations/Exceptions to Terms, Conditions, and/or Statement of Work

If the Offeror desires any exception/deviation from that prescribed in the scope of work, terms and conditions, or any other portion of the solicitation document, clearly note below these exceptions/deviations. Offeror will provide reference to the particular page, paragraph, and sentence and provide Offeror's changes to the page, paragraph, and sentence.

The district reserves the right to determine the responsiveness, acceptable level, and best value of any such deviation.

Offeror requests the following exceptions/deviations to the solicitation's terms, conditions, and/or statement of work:

_____
_____
_____

[ ] No exceptions/deviations taken.

Company Name: _____ Submitter's Name/Title: _____

Address: _____ City, State and Zip Code: _____

Email Address: _____

Submitter's Signature: _____ Telephone No. _____

Fax No. _____ 800 # (if available) _____

Date: _____

Section V: General Terms and Conditions

These General Terms and Conditions govern the relationship between the District and Offeror and are hereby made part of the Agreement/Contract between the parties. "Offeror" refers to the firm/company submitting a response to a solicitation by the district. After acceptance of the Offer and a resulting Contract, "Offeror" will become synonymous with "Vendor", "Contractor", "Provider", or similar title. "Offer" refers to a response to a solicitation for an Offer—i.e., "Bid" for an IFB/RFB; "Proposal" for RFP/RFQ; or "Offer" for RFO.

The district is **exempt from Texas State and Local Sales Tax and Federal Excise Tax** in accordance with Article 20.04 (F) 3, Chapter 20, Title 122a, Taxation, General, RCS, 1925, as amended by the 57th Legislature, first Called Session, 1961 – DO NOT INCLUDE TAX IN BIDS OR PROPOSALS OR CONTRACTS.

The district is afforded a degree of **sovereign immunity** under various statutes. The district does not intend to surrender or reduce any of its sovereign or contractual rights provided under Federal and/or Texas statute(s) and any attempt at any time during the Contract process, or Contract effective dates, by the Offeror or any third-party to do so is null and void.

The district is an equal opportunity educational provider and employer and does not discriminate based on race, color, religion, sex, national origin, disability, sexual orientation, and/or age in educational programs or activities that it operates or in employment decisions. The district is required by Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Age Discrimination Act of 1975, as amended, as well as Board Policies not to discriminate in such a manner. (Not all prohibited bases apply to all programs).

1. **The following subparagraphs apply generally to solicitations, responses to solicitations (i.e., Offers), evaluation, and Contract award; however, remedies, representations, and performance-type requirements apply during Contract performance:**

   a. **SUBMISSION OF OFFER**. Submission of a response to an RFP, IFB, RFO, or similar solicitation document shall be considered as the representation that the Offeror has carefully read all aspects of the solicitation document and has investigated all past, present, and required conditions, including material and labor markets, of the goods or services being offered in the solicitation and freely submits an Offer. Failure of Offeror to examine the specifications, standard provisions, and/or all instructions will be at Offeror's risk.

   b. **RESPONSIVENESS.** It is the Offeror's responsibility to read and comply with the information provided. Failure to complete and submit the bid/proposal according to the information and instructions may result in Offeror being declared "non-responsive" and being disqualified from further consideration.

   c. **SEALED SUBMISSION OF OFFER.** Offeror should submit its Offer in a sealed envelope, plainly marked with Offeror's name, Bid/Proposal number, receipt/opening date, and time. Offers may be mailed or delivered; however, the Offers should be in an envelope as noted above regardless of delivery method.

   d. **LATE SUBMISSION.** Offers received after the time and date specified will **not** be accepted. Offers must be submitted in sufficient time to be received and time-stamped at the Procurement Services Department on or before the Offer Receipt/Opening Time and Date. The district will not be responsible for delivering mail from the post office.

   e. **SIGNATURE BLOCK.** Offers received without proper signature will **not** be accepted. All required signatures shall be original and in ink.

   f. **FACSIMILE (FAX) OFFERS.** Facsimile (fax) bids/proposals will **not** be accepted unless otherwise noted elsewhere in the solicitation.

   g. **PRICES/COMMENTS IN INK AND UNIT PRICE EXTENSIONS.** All prices and comments must be typed or written in ink. Offers written in pencil will **not** be accepted. Mistakes may be crossed out, and corrections inserted and initialed by Offeror. Unit prices should be extended. The unit price will prevail in resolution of mathematical errors in extension or total. Offeror must submit prices and other information required in the proper spaces on the offer forms provided. Deviation may result in disqualification of the Offer.

   h. **ESTIMATE OF REQUIREMENT.** The quantities stated elsewhere in the solicitation documents (IFB, RFP, RFO, etc.) are an estimate of use ONLY unless clearly stated in the Statement of Work. The district makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract unless stated in the Statement of Work. Specific quantities will be noted on subsequent Purchase/Delivery Orders issued under this Contract. If the District's requirements do not result in orders in the quantities described as "estimated" in the minimum specifications, that fact shall not constitute the basis for an equitable price adjustment. The district is not required to purchase requirements in excess of the estimated quantity on any item from the Offeror.

i. **DISCOUNT PURCHASES.** If solicitation is for discount purchases instead of fixed prices, zero (0) percent discounts will generally not be considered for contract award. The district may select 3 to 5 of the most qualified/responsive offering the most competitive pricing. Offerors must submit a catalog or price list, if applicable, with the Offer for evaluation purposes. Failure to submit a catalog may result in disqualification. Contracts/Agreements shall be awarded to the Offerors, as determined by the district, offering the most competitive pricing based upon a comparative analysis of each Offeror's manufacturer/catalog pricing.

j. **IDENTICAL OFFERS.** In the event identical Offers (i.e., tied "bids") are received which are determined by Dallas ISD to be the best value, responsible, responsive Offer price and other factors considered, one Offer may be selected as the successful Offeror. If one of the Offerors submitting the identical proposal is a resident of the district, that Offeror shall be selected. If two or more such Offerors are residents of the district, one shall be selected by the casting of lots. In all other cases, one of the identical Offers shall be selected by casting of lots.

k. **CONTRACT RIDERS**. All School Districts, with a Board approved inter-local agreement with the district expressing an interest in riding the contract resulting from this solicitation may do so with written notification. Please indicate if contract pricing and terms will NOT be extended to these districts. The district may assess a nominal administrative fee to the interested parties upon request. District assumes no responsibility in the evaluation and award of any contract that result from this rider. Any contract resulting from this rider is strictly between the individual School Districts and the Offeror.

l. **ACKNOWLEDGEMENT OF AMENDMENTS/ADDENDA.** Changes to the solicitation document (IFB, RFP, RFO, etc.) statement of work, specifications, or similar substantial changes, prior to award, may be made in the form of an addendum. Each addendum must be returned with the signed Offer and with any other addendum at the time and date of the solicitation opening or prior to that time. If the addendum **is not returned**, the Offer **may be** disqualified.

m. **ALTERNATIVE BIDS.** This subparagraph is specific to a "Bid" (i.e., an Offer to an IFB or RFB). No alternate Bid will be accepted, unless otherwise stated in the solicitation. Submission of an alternate or taking exceptions to the IFB/RFB (including, but not limited to, the Statement of Work; Specifications; and General Terms and Conditions) may result in the Offer being declared "non-responsive" and not being further considered for award.

n. **CHANGES IN NAME, ADDRESS, OR PHONE NUMBER.** Offerors are solely responsible for notifying the District's Procurement Services Department, of any changes, in writing, to the company's name, address and telephone number. If an Offeror fails to notify the district of any changes in their contact information, the Offeror may be suspended from transacting business with the district until the changes have been made.

o. **SUBSTITUTIONS.** The use of brand names and catalog numbers does not prohibit the substitution of other brands of equal quality unless **"NO SUBSTITUTE"** is specified; however, the determination of an acceptable "substitute" is at the sole discretion of the district. No substitutions or cancellations are permitted after award without written approval by the District's Director of Purchasing.

p. **BRAND NAME OR EQUAL.** The use of brand/models in the solicitation document (IFB, RFP, RFO, etc.) is to establish a standard of quality, workmanship, performance, etc. Offerors may bid/propose brands/models they deem equivalent or equal to those shown on the bid/proposal. The burden of proof of equivalency or "Equal or" is upon the Offeror; however, the final determination of "Equal" is at the sole discretion of the district. For line items, the Offeror must specify make or model or each line item, even if offering the brand specified. DO NOT state "As Specified" or "Equal"—clearly and completely list the brand/make/model. Offeror (s) submitting brands or models other than those specified may be requested to furnish samples, at Offeror's expense, of their offerings for evaluation by the district. These samples will generally NOT be returned and may be destroyed or consumed in testing/evaluation.

q. **DEMONSTRATIONS/SAMPLES.** In order for the district to determine an acceptable "substitute" or to determine "as equal" for "brand name or equal", a demonstration or sample of the products/goods may be requested.

(1) Offeror shall provide the demonstration version or sample at no cost to the district. Offeror shall bear all expenses for transportation, installation, removal, operational supplies, and repair parts of the demonstration/sample.
(2) Offeror understands that this evaluation is without monetary consideration for the use of the equipment. It is for evaluation only and does not obligate the district to purchase the products or goods at the present or any future time.
(3) The district agrees to use the demonstration version/sample for evaluation only and to use the product/good in an environment and under circumstances substantially consistent with the product's/good's design and intended use. The district agrees to provide reasonable care and safeguard of the demonstration version/sample while it is in the district's possession; however, Offeror acknowledges that the demonstration version/sample may be damaged/consumed.destroyed during the evaluation. Offeror understands that the results of the evaluation many are not used as an endorsement or for promotional purposes by the district.

(4) Offeror will indemnify, save harmless and defend the District from and against any and all claims, actions, debts, liabilities, and attorney fees arising out of, claimed on account of, or in any manner predicated upon loss of, or damage to the demonstration version/sample, or injuries to, or death of any and all persons whatsoever, in any manner caused by or attributed to Offeror or Offeror's agents, servants, representatives, consultants, or employees while in, on, or about the District or attributed to the failure or malfunction of the demonstration version/sample provided by the Offeror during the District's use, test, or evaluation of the demonstration version/sample.

r. **FACILITY MODIFICATIONS.** If any part of the Offer will necessitate any existing facility modifications to include, but not limited to, the removal or relocation of any physical elements, the Offeror shall provide a detail list of every modification necessary and associated cost to address each item. Further, if there is an increase of existing electrical, plumbing, or mechanical load(s) to the existing facility that will necessitate additional electrical outlets, water sewer, air conditioning, etc., the Offeror shall provide a comprehensive list of such, the necessary details and associate cost to address such item. The Offeror shall comply with all applicable codes, regulations, statutes.

s. **INFORMALITIES AND IRREGULARITIES.** The district reserves the right to waive minor irregularities and/or informalities and to accept or reject any bids/proposals in whole or in part or to negotiate separately in any manner necessary and/or to terminate the procurement solicitation process in its entirety provided that action is in the best interest of the district. The Purchasing Director shall reject the Offer of the Offeror who is deemed non-responsive. The unreasonable failure of an Offeror to promptly provide information with respect to responsibility may be grounds for a determination of non-responsibility.

t. **OFFER WITHDRAWAL.** An Offeror may withdraw its Offer upon written request at anytime prior to the receipt/opening date and time. "Bids" cannot be amended or altered, except to correct price extension errors, after the opening date and time; however, "Proposals" or "Offers" may be amended or altered IF the District initiates discussions.

u. **NO CONTACT PERIOD.** The district has District Policies in place that prohibit Offerors from contacting individual Board members and other District personnel during certain periods during the procurement process and/or during contract performance. Essentially, from date of issue of a solicitation document until date of award, Offerors may only have contact with Procurement Services and Legal personnel of the district. Offerors should refer to Board Policies. Violations may result in disqualification, being deemed non-responsive, and/or other actions.

v. **PROHIBITION AS SUBCONTRACTORS.** No Offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

w. **PUBLIC INFORMATION ACT.** Offeror agrees and acknowledges that any and all documents submitted in response to solicitations or incorporated into a Contract/Agreement are subject to disclosure under the State of Texas Public Information Act. Offeror acknowledges that he/she has the responsibility to brief the Attorney General's Office on why certain Offeror documents identified as confidential and/or proprietary fall within an exception to public disclosure.

x. **PROPRIETARY INFORMATION.** Offeror must attach a detailed listing of any/all restrictions on the dissemination, public disclosure, or use of any data contained in their response and be informed that any declared proprietary information will be addressed as required by applicable law, regulation, and District policy.

y. **DISCOUNTS**. Offerors are encouraged to offer discounts for quantity buys, timeliness of buys, and/or prompt payment incentives as "value-adds". The conditions for earning the discount may be indicated by the item being offered or by submitting a separate page with the information. These discounts may be considered in determining the low Offer and will be part of any contract issued.

z. **ECONOMIC PRICE ADJUSTMENT (EPA)**. Offeror may include an EPA (price increase or decrease) in its Offer; however, the offered price increases are to be capped by the appropriate Consumer Price Index (CPI) or Producer Price Index (PPI) that should be identified by the Offeror. EPA price increases are not automatic, are not cumulative, and must be justified by the Offeror, in writing, and may be contingent upon District approval. The district reserves the right to terminate a Contract, without prejudice to the district, if a proposed price increase is not reasonable as determined by the sole discretion of the district.

aa. **COMPETITION INTENDED.** It is the district's intent to maximize competition for all solicitations. It shall be the Offeror's responsibility to advise the District's Executive Director for Procurement Services, in writing, if any language, requirement, specification, etc. or any combination thereof, inadvertently restricts or limits the requirements stated in this solicitation to a single source. Such notification must be received not later than five (5) days prior to the date set for receipt/opening.

bb. **OFFEROR'S EXPERTISE**. By submitting an Offer and/or accepting a purchase/delivery order, Offeror represents that he/she is knowledgeable in the goods or services being offered including historical, current, and future market conditions and that the district can rely on this representation. Offerors will deliver products, goods, etc. per specifications.

cc. **SOLICITATION DOCUMENT PART OF CONTRACT.** The contents of the Offer submitted by the successful Offeror, solicitation

document, and General Terms and Conditions will become part of any Contract awarded. The successful Offeror will be expected to perform and honor a Contract awarded by the district as a result of Offeror's Offer.

dd. **F.O.B. DESTINATION (FREE ON BOARD).** F.O.B. destination for all competitive Offers is the district's standard for Offers and inside delivery.

ee. **RECEIPT AND OPENING OF OFFERS.** (1) Bids (i.e., Offers from IFBs/RFBs) will be publicly opened, Offerors identified, and prices read aloud immediately following the Receipt/Opening Date/Time. Bidders are invited to be present at the opening of the bids on the date and hour specified. (2) Proposals (i.e., Offers from RFPs, RFOs, and RFQs) will be opened by the district in a non-public forum. Names of Offerors and prices will NOT be disclosed until after evaluation and award. (3) All Offers received in response to solicitation documents (IFBs, RFPs, RFOs, RFQs, etc.) will be forwarded to an applicable Evaluation Committee for evaluation and recommendation.

ff. **NON-CONFORMING TERMS AND CONDITIONS**. Offerors submitting a non-conforming response or an Offer that includes corporate forms, brochures, or sample contract forms that do not conform to the solicitation document may be requested to withdraw non-conforming terms and conditions that do not affect the price, quality, or delivery of goods/services. If the response is to an RFB/IFB AND price, quality or delivery is affected, the Offer will be deemed "non-responsive" and will not be considered for further evaluation and/or award.

gg. **OFFEROR DOCUMENTATION**. The Offeror's "binder", cover letter, and/or standard statement of work template, etc. may become a part of the Contract Documents, but the Terms and Conditions (General and Special) and Statement of Work (SOW) of the District's solicitation document (RFP, IFB, RFO, RFQ, etc.) take precedence unless Offeror's deviations/exceptions are specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") that is executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract.

hh. **EXCEPTIONS FROM TERMS, CONDITIONS, and/or SCOPE OF WORK.** If there is any proposed exception from that prescribed in the scope of work/services, the appropriate line in the scope of work/services shall be ruled out and the exception clearly stated or the exception clearly and completely noted on the Exceptions to Terms, Conditions, and/or Statement of Work Form. The district reserves the right to determine the responsiveness of any such deviation. If the District determines any such deviation is unacceptable, the Offer may be deemed "non-responsive" and not be considered for further evaluation and/or award. The district's determination of non-responsive is at the district's sole discretion and is not subject to dispute.

ii. **DEBARMENT.** By submitting a proposal, the Offeror certifies that it is not currently debarred by the Texas Building and Procurement Commission, the District, or similar State/Federal Agency.

jj. **SUBCONTRACTORS.** Offeror shall include a list of all subcontractors anticipated to be used in fulfilling the Offer. Offeror shall also include a statement of the Subcontractor's qualifications. The district reserves the right to reject the Offeror's selection of any or all Subcontractors.

kk. **USE OF FORMER DISTRICT EMPLOYEES**. Offeror will comply with current Board Policies impacting on Offeror using former District employees in any capacity on a Contract/Agreement with District. Essentially, former District superintendents, assistant/deputy superintendents, chiefs, executive directors, and directors (or equivalent) cannot be used for a period of two years after leaving the district and eighteen months for other employees.

ll. **EXPENSES INCURRED IN OFFER PREPARATION**. The district will not be liable in any way for any costs incurred by any Offeror in the preparation of its Offer, nor for the presentation of its Offer and/or participation in any discussions and/or negotiations.

mm. **REQUIREMENT FOR INTERPRETATION**. Requests by the District's Director of Purchasing for clarification of Offers shall be in writing unless the clarification does not impact on price, delivery, quality, or a specific portion of the Statement of Work. Applicable requests shall not alter the Offeror's pricing information contained in its price proposal.

nn. **TAXES.** Because fiscal responsibility is an evaluation criterion, in the event that an Offeror is, or subsequently becomes, delinquent in the payment of school advalorem taxes, such fact may be grounds for rejection of the Offer, or if already awarded the Contract/Agreement, for termination of the contract without prejudice to the district. However, the District reserves the right to deduct any amounts owed for delinquent taxes from pending payments that the district may owe to the Offeror as a result of such Contract.

oo. **PAYMENT OF TAXES.** All Offerors located or owning property in Dallas County shall assure that all real and personal property taxes are paid. The district will verify payment of all real and personal property taxes due by the Offeror prior to award of any contract award or renewal.

pp. **INDEPENDENT CONTRACTOR RELATIONSHIP.** In any resulting contract/agreement, Offeror is being engaged as an independent contractor and the district will have no responsibility or obligation to provide transportation, insurance, workers' compensation, or

employee benefits normally associated with employee status. Offeror covenants and agrees to conduct itself consistent with independent contractor status and that it will neither hold itself our as nor claim to be an officer, partner, employee, or agent of the district. Offeror also cc Offeror will disclose any relationship that could be construed as a conflict of interest or potential conflict of interest or prejudice the independent relationship of the District and the Offeror.

qq. **RELIANCE ON OFFEROR ASSURANCES**. In the performance of the services hereunder, Offeror represents that it, its owner, and employees have all licenses and permits to (if required) work in the state of Texas and that Offeror is a business either fully incorporated in the state of Texas or recognized and allowed to operate in the state of Texas. Offeror represents that it, its owner, and employees have the knowledge, abilities, skills, and resources to provide the technical assistance and support services specified in this agreement as required by the district. Further, Offeror represents that it has the competence and qualifications to render such services with little or no guidance from the district and has experience in providing said goods, products, commodities, and/or services and in reliance on such assurances, the district may enter into an agreement with the Offeror. Offeror shall comply with all applicable federal, state, and local laws, executive regulations, and orders.

rr. **EVALUATION CRITERIA.** In awarding a Contract, Offers will be evaluated on: the purchase price, the reputation of the vendor and of the vendor's goods and services, the quality of the vendor's goods or services, the extent to which the goods or services meet the District's needs, the vendor's past relationship with the District, the impact on the ability of the District to comply with laws relating to historically underutilized businesses, the total long-term cost to the District to acquire the goods or services, and vendor's references, record for fiscal and contracting responsibility, knowledge of the product/good/service and any other relevant factor specifically listed in the solicitation "Other relevant factors" are identified elsewhere in the solicitation. Quality and suitability of the product and not price alone shall be considered in the acceptance of Offers.

ss. **ACTIONS REGARDING OFFERS TO SOLICITATIONS/CONTRACTS.** The district expressly reserves the right, without prejudice, to:

(1) Reject or cancel any or all proposals.
(2) Waive any defect, irregularity, or informality in any response to a solicitation procedure allowed by statute or policy.
(3) Waive as an informality, minor deviations from specifications at a lower price than other proposals meeting all aspects of the specifications if it is determined that total cost is lower, and the overall function is not impaired.
(4) Reissue solicitation (i.e., RFP/IFB/RFO/RFQ).
(5) Consider and accept an alternate proposal as provided herein when most advantageous to the district.
(6) The district has the right to cancel the contract with a thirty-day written notice, without prejudice, for factors including, but not limited to, non-availability or non-appropriation of funds; and/or
(7) Procure any item or services by other means to meet time-sensitive requirements.

tt. **OUT OF STATE OFFERORS**. The "Reciprocity Rule" applies. Offerors whose principal place of business is located in a state which gives preference to residents are subject to the same restrictions when submitting an Offer with an entity of the State of Texas.

uu. **WARRANTY**. The products, goods, or services furnished under this Contract shall be covered by the most favorable commercial warranties available to any customer for same or similar products, goods, or services.

vv. **ENVIRONMENT OF DISTRICT**. The district is tobacco-free, drug-free, weapon-free, and alcohol-free environment. It is the responsibility of the Offeror to ensure that Offeror's employees, agents, subcontractors, etc. are not under the influence and/or possession of drugs, tobacco, alcohol, or weapons. If an employee, agent, subcontractor, etc. of Offeror is found to be under the influence and/or in possession of drugs/tobacco and/or alcohol and/or weapons at the time of service, the Offeror will be notified at once by the district that the individual(s) must be immediately restricted from all District campuses/departments. Repeated offenses by Offeror could result in Contract termination for default.

ww. **FIRM PRICE OFFER PERIOD.** Offer pricing shall be firm for a minimum period of one hundred and twenty (120) calendar days following the date established for the receipt/opening date to allow time for the district to evaluate, accept, and/or reject Offers.

xx. **AWARD TO MULTIPLE VENDORS.** The district reserves the right to award to a single vendor or multiple vendors i.e., primary, secondary, and tertiary suppliers, etc. The Contract is not exclusive to one Offeror unless so stated in the Statement of Work, or Offeror states "all or none" in its response/Offer and Offer is accepted by District.

yy. **ACCEPTANCE BY DISTRICT**. No award of Contract shall be valid, and no contract is created or binding, until the Offer has been accepted by the district's appropriate approval authority.

zz. **VENDOR FILE UPDATE BY OFFEROR.** Within seven (7) working days of notification of award of Contract/Agreement, Offeror must update the vendor information in District's i-Supplier data base. Failure to update the i-Supplier data base may result in termination of Contract/Agreement for default.

aaa. **CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**. Contract Documents are the documents that comprise the basis of contractual agreement between the district and the successful Offeror. In the simplest contracts, Contract Documents include the

district's solicitation document (RFP, IFB, RFO, RFQ, etc.); the Offeror's response to the solicitation document; and the notice of award or acceptance by the district. In more complex contracts, Contract Documents may be identified in the District's notice of award or acceptance and may include the District's solicitation document (RFP, IFB, RFO, RFQ, etc.); the Offeror's response to the solicitation document; the District's request for Best and Final Offer (BAFO); the Offeror's response to the BAFO; any other documents impacting on the Agreement as deemed necessary by the District; and the notice of award or acceptance by the District.

(a) Offeror will ensure the district's terms and conditions, statement of work, and Contract Documents order of precedence flow-down to Offeror's subcontractors, agents, and/or third-party business "partners".

(b) Regardless of the documents comprising the Contract Documents, the District's solicitation document (to include the Statement of Work (SOW) and Terms and Conditions) take precedence over other Contract Documents (regardless of date) unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract. Phrases imbedded in supporting documents submitted in response to a solicitation document that attempt to limit, change, restrict, or replace the precedence over the District's solicitation document may be declared null and void by the District unless such "changes" are specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract.

(c) After contract award, the successful Offeror, its sub-contractors and/or other third-parties to the Contract may provide additional information and/or documentation to facilitate accomplishment of the Contract's SOW in the form of administrative procedures, processes, flow charts, templates, etc.; however, these additional documents (especially imbedded comments or general references terms, conditions, SOW) do not change nor replace existing Contract language nor do they supercede or change precedence of the Contract Documents unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Conditions, and/or SOW") executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract. Any attempt by the Offeror and/or its subcontractors, agents, third parties, etc. to submit or introduce documents that supercede or take precedence over the Contract Documents may be declared null and void by the district.

(d) Supporting and/or backup information and/or documentation to include, but not limited to, administrative procedures, work flow charts, templates, third-party documents, end-user license agreements, "shrink-wrap" and/or "click-wrap" licenses, etc. may be used to define processes, procedures, or performance expectations; however, this supporting/backup information/documentation does not take precedence over the solicitation document and/or documents identified as Contract Documents unless specifically identified in a separate document (substantially titled "Exceptions to Terms, Condition, and/or SOW") that is executed by Offeror and the District's Purchasing Director and included as an attachment/addendum to the Contract.

2. **PROTEST and/or APPEAL PROCESS**. A protest shall be in writing and shall be filed with the District's Chief Financial Officer (CFO). A protest of a solicitation shall be received by the CFO before the receipt/opening date. A protest of a proposed award or of an award or notice of termination or default shall be filed within ten (10) working days after the protester knows or should have known the basis of the protest. A protest received after the ten (10) working day period will not be considered and will be returned. A protest must include:

   a. The name, address, and telephone number of the protestor.
   b. The signature of the protestor or its representative.
   c. Identification of the solicitation or contract number.
   d. A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
   e. The form of relief requested.

   The CFO will respond to all protests not later than ten (10) working days of receipt.

3. **OFFICIAL CORRESPONDENCE**. All official Contract related correspondence must be mailed to the District's Director, Contracts & Procurement, Bond/Construction Services as noted on the cover page of the solicitation document.

4. **PURCHASE ORDERS/DELIVERY ORDERS.** A Purchase Order serving as a Delivery Order will be issued after award of a Contract and will cite the IFB/RFP/RFO/RFQ number, a brief explanation of the goods and/or services being purchased under the Contract and required delivery dates of deliverables under the Contract. The terms and conditions of the applicable IFB/RFP/RFO/RFQ take precedence over the General Terms and Conditions associated with a "normal" Purchase Order. The purchase order/delivery order also serves as the tracking document to facilitate payments; therefore, the successful vendor **shall not** begin work/services or deliver merchandise without a signed purchased order/delivery order. Successful Offeror must be willing to accept the District's Purchase Orders as Delivery Orders for the duration of the contract term. Any Purchase/Delivery Order issued during the effective period of this Contract, and not completed within the effective period of the Contract, will be completed by the Offeror under the terms and conditions of this Contract.

5. **DISPUTES.** Any controversy, dispute, or claim arising out of this Agreement will be attempted to be resolved by discussions between the parties. If discussions do not result in resolution, a discussion between an officer of Offeror (or a designated representative of an officer) and the District's Executive Director of Procurement Services (or designated representative) will attempt to resolve the controversy, dispute, or claim.

6. **UNAUTHORIZED PURCHASES.** Offeror understands and acknowledges that during the term of the Contract any shipment or delivery of

goods and services made to District's campuses and departments without a properly approved purchase order/delivery order constitutes an unauthorized purchase and financial obligation. The district does not assume any responsibility for these products, goods, and services. Offeror understands and accepts full responsibility and will not seek payment for unauthorized purchases. Offeror further understands and acknowledges that the district will not issue payment for products, goods and services delivered without a properly approved purchase order/delivery order.

7. **ASSIGNMENT/DELEGATION.** No assignment nor transfer of this Contract (or resulting Contract), in whole or in part, to any other party will be allowed unless the Offeror to whom the Contract is awarded formally notifies the district in writing and written approval from the District's Director of Purchasing or designee is received prior to the transfer/assignment.

8. **PLACE OF DELIVERY**. The place of delivery shall be that set forth in the purchase order. All deliveries must be inside deliveries unless other arrangements are made. All PRICES - F.O.B. DESTINATION - SHIPPING and HANDLING CHARGES PREPAID.

9. **TITLE AND RISK OF LOSS**. The title and risk of loss of the goods shall not pass to the District until the District actually receives and accepts possession of the goods at the point or points of delivery regardless of FOB terms.

10. **RIGHT OF INSPECTION**. The district has the right to inspect the goods at delivery before acceptance. If the District is not able to inspect the goods at the time of the delivery, the district reserves the right to inspect and approve the material within a reasonable time after delivery. If specifications are not met, material may be returned at Offeror's expense and the Offeror assumes all risk for damages incidental to the rejection of such goods. Payment shall not constitute an acceptance of the material nor impair the district's right to inspect or invoke any of its remedies.

11. **DELIVERY TERMS**. If a delivery is to be made to a location other than the district's central warehouse/distribution center, the delivery shall be made and articles shall be placed inside the school building or district facility in the room(s) designated, at no additional charge. Offeror is required to contact the School/Department specified on the purchase order, twenty-four (24) hours prior to delivery.

12. **POINT OF CONTACT.** Offeror may be assigned a day-to-day contact person/representative at the District as the Point of Contact for this Agreement/Contract. The district's representative is a functional area expert or a day-to-day contract administrator or manager for the district but is not authorized to modify this contract. Amendments to solicitation documents and contracts/agreements will be made by the District's Executive Director of Procurement Services after proper coordination and notification. Offeror is not authorized to act on the guidance of a District employee that is not authorized to make changes.

13. **MATERIAL SAFETY DATA SHEETS.** The district will not receive any materials, products or chemicals which may be hazardous to an employee's health unless accompanied by a Material Safety Data Sheet.

14. **TIME.** Time is of the essence. Offeror agrees to perform all obligations, deliver products, and/or render services set forth herein.

15. **INDEMNIFICATION and HOLD HARMLESS.** Offeror agrees to indemnify, defend, and hold District harmless from any patent, copyright, trademark, or trade secret infringement claim or cause of action, or any similar intellectual or proprietary rights infringement claim or cause of action, which are based on or related on goods or services sold or used by the Offeror in connection with this Agreement. Offeror agrees to indemnify, defend, and hold harmless the District, its officers, directors, trustees, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and reasonable attorneys' fees, for damages arising out of or in connection with the Offeror's negligence and/or intentional acts in providing the goods, products, commodities, and/or services furnished under this Agreement. Offeror shall defend any such claims or causes of action at its own expense, and the district shall have the right to have such litigation monitored by its own counsel at District expense.

16. **RECOVERY OF FUNDS.** If the Offeror fails to deliver both the quality and quantity of items on which the award was made in the manner specified in the Contract, the District reserves the right to purchase the specified products, goods, and/or services on the open market and Offeror agrees to allow the district to deduct the difference in price and cost of handling, if any, from pending invoices. If there are no outstanding invoices the Offeror will be billed accordingly and will pay the amount within fifteen (15) days of the notification by the district.

17. **REMEDIES FOR NON-PERFORMANCE**. If at any time, the Offeror fails to fulfill or abide by the terms, conditions, or specifications of the Contract (i.e., delays, defaults, non-performance, etc.), the District reserves the right to employ any remedy allowed by Contract, in law, in equity, or by Uniform Commercial Code (UCC) to include, but not limited to, the purchase on the open market and charge the Offeror the difference between contract and actual purchase price and/or terminate the Contract within ten (10) days written notification of intent.

18. **LIQUIDATED DAMAGES**. If the successful Offeror fails to deliver or defaults on this Contract within the time specified in the contract, the Offeror shall pay (or have withheld from payments due), at the option of the district as liquidated damages $200, or the amount identified elsewhere in the solicitation/Contract, per line item of Delivery Order/Purchase Order that is delinquent. Offeror agrees that this is a reasonable cost to compensate the district for time and effort involved in procuring replacement products and/or services, which costs would be difficult, if not impossible, to compute with certainty, and does not constitute a penalty. Assessment of liquidated damages does not preclude the district from seeking and obtaining other remedies as set forth in this solicitation or any other remedy at law or in equity

available to the district.

19. **FORCE MAJEURE.** The district shall not be liable for defaults or delays due to acts of God or the public enemy, acts or demands of any governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

20. **APPLICABLE LAW AND VENUE**. The validity, construction, and effect of this contract and any and all extensions and/or modifications shall be governed by the laws of the State of Texas. Texas law shall govern regardless of any language in any attachment or other document that the Offeror may provide. Both parties agree that the venue for any litigation arising from this contract shall occur in Dallas, Dallas County, Texas.

21. **CONTRACT MODIFICATION**. Amendments/addenda may be made for additions, deletions and or modifications of products, goods, or services under substantially the same terms and conditions of this Contract. Such amendments/addenda must be in writing and approved by an authorized representative for the Offeror and the District. The Contract will not be modified by any oral statement made by any District employee.

22. **EFFECTIVE DATE.** The Effective Date of the Contract/Agreement, if any, is the date that award is approved by Dallas ISD's Board of Trustees or designated representative. In some cases, the Effective Date, and the date for start of services may be separated by several weeks and/or months.

23. **CONTRACT PERIOD/EXTENSIONS.** Contract period is as outlined elsewhere in the solicitation/Contract and the District reserves the right to exercise renewal option with or without prejudice. Contract renewals/extensions will be exercised and executed within forty-five (45) days of the expiration of the then current term unless a different time is noted elsewhere in the solicitation/Contract. If at the end of the final day of the final Contract/Agreement term and no termination notice has been received from either party, the Contract/Agreement may be extended in writing via an addendum for up to one hundred twenty (120) days beyond the date of the then current expiration date at the sole option of the District with mutual agreement between the parties; however, the extension addendum must be signed by both parties prior to the 30th day from the ending date of the final term.

24. **SEVERABILITY.** In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

25. **PURCHASE OF SUBSTANTIALLY SIMILAR PRODUCTS/GOODS/SERVICES.** The district at its discretion may purchase from existing Contracts/Agreements for products, goods, supplies, and services which may be the same or similar to those identified in the existing Contract/Agreement, as is deemed in the best interest of the district.

26. **ACCELERATED DELIVERY.** If the District urgently requires delivery of any quantity of an item before the delivery date under this Contract, and if the Offeror will not accept an order providing for the accelerated delivery, the district may acquire the urgently required product(s) from another source.

27. **ETHICS IN PUBLIC CONTRACTING.** District employees are prohibited from receiving, soliciting any gifts, inducement, gratuities, or kickbacks. The District may, by written notice to the Offeror, terminate this Contract without liability to the District if it is determined by the District that gifts, gratuities, etc. in the form of entertainment, gifts, or otherwise, were offered or given by the Offeror, or any agent, or representative of the Offeror, to any officer or employee of the District with a view toward securing a contract or securing special treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this Contract is terminated by the district pursuant to this revision, the district shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Offeror in providing such gratuities.

28. **SPECIAL TOOLS, TEST EQUIPMENT, MASTER TEMPLATES**. If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Offeror for the purpose of filling this order or if a master template/die has to be constructed, such special tooling equipment and templates/dies and any process sheets related thereto shall become the property of the district and to the extent feasible and desired by the district.

29. **RIGHT TO AUDIT.** The Offeror's activities conducted, and records maintained pursuant to the Contract shall be subject to monitoring and evaluation by the district or its duly appointed representative(s). All records must be maintained for 24 months from the completion of the Contract (including any or all extensions) unless longer retention is required and identified elsewhere in the solicitation/Contract.

30. **RESPONSIBILITY FOR ACTIONS.** Offeror is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Offeror nor any of the foregoing has any authority to act or speak on behalf of the district.
31. **CRIMINAL BACKGROUND CHECK.** Offeror will obtain criminal history record information that relates to an employee, applicant for employment, agent of the Offeror, if the employee, applicant, agent, or subcontractor has or will have continuing duties related to the contracted services; and the duties are or will be performed on District property or at another location where students, or students' records, are regularly present. The Offeror shall certify to the district before beginning work and at no less than an annual basis thereafter that criminal

history record information has been obtained. Offeror shall assume all expense associated with the background checks, and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony, or misdemeanor involving moral turpitude, or any crime involving harm to a child, as defined by Texas law, from District property or other location where are students are regularly present. District shall be the final arbiter of what constitutes a "location where students, or students' records, are regularly present." Further, unless otherwise specified in the contract, Offeror's and its employee(s), agents, or subcontractors, while on District property, shall not have direct contact with any student. If the Offeror is the owner or sole operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review. Offeror must submit original evidence of criminal history record information acceptable to the District with this Agreement showing compliance.

32. **EMPLOYEE DISCRIMINATION.** During the performance of this Contract, the Offeror agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, disability, political belief, religion, marital and/or veteran status.

33. **SEXUAL HARASSMENT**. Sexual harassment or sexual misconduct with District employees or students is strictly forbidden and is subject to disciplinary action. In the performance of this Contract, Offeror agrees to not engage in sexual harassment or sexual misconduct with employees or students.

34. **INVOICES AND PAYMENTS.** Payment terms will be net thirty (30) days after acceptance of delivery or receipt of correct invoice, whichever comes later, unless a prompt payment discount is offered or unless different payment terms are noted elsewhere in the Contract. All invoices must be mailed to the district's address as noted elsewhere in this solicitation/Contract, but Attention: Accounts Payable.

35. **TERMINATION.** The award or Agreement/Contract (or Agreement/Contract resulting from this solicitation) may be terminated or cancelled under the following circumstances.

    a. District may cancel or terminate the award or agreement for convenience upon 30-day written notice.

    b. During the term of the agreement, District may terminate the agreement at the expiration of each District budget period if funds are not appropriated for payment under the agreement.

    c. Work under the agreement may be terminated in whole or in part by the district upon delivery to Offeror of a notice of termination specifying the extent to which performance of work under the agreement is terminated and the date upon which termination becomes effective. This right of termination is in addition to and not in lieu of District rights to cancel undelivered goods or services under the agreement.

    d. District may cancel all or any part of the undelivered goods or services of the agreement if Offeror breaches any of the terms of the agreement, including, but not limited to, warranties of Offeror, or if Offeror becomes insolvent or begins bankruptcy or reorganization proceedings.

    e. District's rights of termination or cancellation are in addition to other remedies District may have in law or equity including, but not limited to, debarment or suspension from future Contracts for a period decided by the district and/or termination for default.

36. **WAIVER**. No claim or right arising out of a breach of this Contract by the Offeror can be discharged in whole or in part by a waiver or enunciation of the claim or right unless the waiver or renunciation is supported by Consideration and in writing signed by the district.

37. **SOFTWARE REMOTE ACCESS**. Offeror shall not install a remote access or backdoor into Offeror's systems during its analysis of the district's system or at any other time. Offeror will remove remote access or backdoor from third party software to be used by the district.

38. **LEGAL FEES AND COURT COSTS.** The resulting award from this solicitation constitutes a Contract between the District and the awarded Offeror. If the District has to take an action, in state or federal court, to enforce or interpret this Contract, the District is entitled to recover its reasonable attorneys' fees and court costs from the Offeror. Without waiving any rights available to the district for recovery, if the district is the prevailing party, Offeror hereby agrees and authorizes the district to deduct the reasonable attorneys' fees and court costs from amounts, if any, owed to Offeror under the Contract.

39. **INSURANCE.** Insurance coverages that follow are the minimums required. More detailed requirements are contained elsewhere in these General Terms and Conditions. Offeror certifies that required coverages are in place and will remain in effect during any Contract/Agreement with the District even if proof of insurance is not required.

    a. The Offeror shall not commence work under this contract until all insurance required under this section has been obtained and evidence of insurance has been submitted to and verified by the district, if required. Required insurance coverage must be written by an insurance company licensed to conduct business in the State of Texas, or listed as an eligible surplus line's carrier, as determined by the State Board of Insurance. Insurance companies must have an A.M. Best rating of A-, IV, or better.

b. An original certificate of insurance confirming coverage must be submitted to the district within ten (10) working days after receipt of Notice of Award. The district reserves the right to revoke Board Award or terminate the Offeror for default if the Offeror does not provide an original certificate of insurance within ten (10) working days from the Notice of Award.

c. Contractor shall obtain and maintain insurance, with the exception of Worker's Compensation and Employer's Liability coverage, with the district named as an additional insured. For Worker's Compensation and Employer's Liability, the Contractor will provide and maintain this coverage, and waive subrogation in favor of the district. The certificate(s) of insurance provided the District by the Contractor must reflect the above-stated requirements.

d. **Workers' Compensation**: Offeror must maintain workers' compensation coverage for its employees as required by all applicable Federal, State, Maritime, and local laws including Employer's Liability with limits of $500,000 per accident / $500,000 per employee / $500,000 policy limit with Statutory Limits. Offeror acknowledges that the District will NOT provide Workers Compensation coverage to the Offeror and Offeror represents to the District that all employees, subcontractors, agents, representatives, etc. of the Offeror who will provide products, goods, or services to the District will be covered by worker's compensation coverage for the duration of the Contract, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance regulation. Workers' Compensation policy will be endorsed to provide a waiver of subrogation in favor of the district and coverage must apply to the workers' compensation laws of the State of Texas. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. Persons providing "products, goods, or services" to the district include all persons or entities performing all or part of the services that the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers and owner-operators. "Services" include without limitation, providing hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the project. "Services" do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets. (Vernon's Ann. Civ. Stat., Art. 8308-3.23)

e. **Comprehensive General Liability**: Offeror must maintain comprehensive general liability insurance including contractor's liability; contingent liability; contractual liability; and completed operations and products liability all on the occurrence basis with personal injury coverage and broad form property damage with at least $1 million per occurrence and $2 million aggregate coverage.

f. **Property Damage**: Offeror must maintain property damage coverages with at least the following coverages:
Bodily injury of $1,000,000.
Property damage of $1,000,000.
Aggregate of $2,000,000

g. **Automobile Liability**: Offeror must maintain automobile liability coverage for owned, non-owned, and hired vehicles with minimum limits as follow:
Bodily injury of $250,000 per person.
Property damage of $250,000.

h. **Professional Liability**: For professional/consulting services, professional liability/errors omissions in the amount of $1,000,000 is required.

i. **Pollution Insurance** (Not covered by General Liability): For environmental/hazmat services, pollution insurance of $1,000,000 per occurrence is required.

j. Umbrella Liability Insurance $1,000,000 per occurrence ad $1,000,000 aggregate.

40. **SAFETY.** All Offerors and Subcontractors performing services for the district are required and shall comply with all Occupational Safety and Health Administration (OSHA) State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all Offerors and Subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any person or property within and around the work site area under this contract. Additionally, Offerors and Subcontractors must ensure that their employees refrain from carrying firearms, illegal drugs and or alcoholic beverages while performing duties in accordance with this contract.

41. **BONDS:** Bid bonds, performance bonds, cashier's checks, and/or irrevocable letters of credit are required to ensure performance and safeguard taxpayer funds. **(Applicable only to Construction Solicitations)**

a. In General: The Bonds shall in all respects conform to the requirements of the law of the State of Texas including, without limitation, the requirements in TEX. PROP. CODE §§53.201-53.239, as amended, and shall (1) name obligees; the Owner (i.e., District) and the other Indemnities, a lender(s) of Owner, if any, and the title insurance company(ies) which has (have) issued title policies to Owner or its lender(s), if any, (2) be in form satisfactory to Owner and be issued by a surety licensed and admitted to do business in Texas, which maintains at least a "A-" rating or better as issued by A.M Best & Co.

b. Reinsurance: In accordance with Tex. Ins. Code §7.19-1, for any risk exceeding 10% of the surety's capital on any bid bond, surety bond, or performance bond, the respective surety shall obtain reinsurance on such risk with one or more reinsurers that are duly authorized, accredited, or trusted to do business in Texas. Such reinsurance shall be witnessed by written certification as a condition precedent to District's acceptance of the bond.

c. Venue: If any suit shall be instituted against a surety, guarantee, or Fidelity Company by the District, the proper Court of the county where the bond has been filed shall have jurisdiction of this case, and the surety, guarantee or Fidelity Company shall be deemed resident of the county wherever they may do business. Tex. Ins. Code §7.01 et seq.

d. **BID BOND REQUIREMENT**:

(1) Cashier's check or bid bond is required with bid of $10,000.00 or more.
(2) Each solicitation shall be accompanied by either a cashier's check or Surety Company bid bond in the amount of not less than five (5) percent of total bid/proposal amount. Check or bond shall be payable to the district as payee or oblige and shall be effective on the receipt/opening date of the solicitation. If the Offeror submits a Cashier's Check in lieu of a Bid Bond the following statement must be typed at the bottom left-hand side of the Cashier's Check: "In Lieu of Bid Bond". Bid Bond shall be executed by a surety duly authorized to do business in Texas and licensed by the State of Texas to issue surety bonds.
(3) Such checks or bid bonds will be returned to all except the three lowest Offerors (or all Offerors in the competitive range) after the opening of the Offers; the remaining checks or bid bonds will be returned after the contract award. The surety amount of not less than five (5) percent of the total bid/proposal amount made payable to the district may be forfeited in whole or in part if the vendor does not execute a contract and post the applicable Performance/Payment Bonds or Insurance Certificate required within ten (10) working days after Notice of Award of the Contract.
(4) If any such bid bond is in an amount in excess of ten percent of the surety company's capital and surplus, the District may require, as a condition to accepting the bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten percent of the surety company's capital and surplus with one or more reinsurers who are duly accredited, trusted, licensed and admitted to do business in the State of Texas. The amount reinsured by any reinsurer may not exceed ten percent of the reinsurer's capital and surplus.
(5) If an Irrevocable Letter of Credit is submitted in lieu of a Cashier's Check or Bid Bond the financial institution must be subject to the laws of the State of Texas. The letter must be made payable to the district in the amount of not less than five (5) percent of total bid/proposal amount. The letter must state "Irrevocable" in order to satisfy the district's surety requirement. In the event the contract is not awarded to the applicable Offeror, the original letter of credit will be returned.

e. **PERFORMANCE AND PAYMENT BONDS OR IRREVOCABLE LETTER OF CREDIT REQUIREMENT:**

(1) Are required on contracts for $25,000.00 or more.
(2) Offeror agrees that upon award of Contract, Offeror will execute and submit the required documents within ten (10) working days after receipt of Notice of Award. Offeror shall not commence work under this contract until the Performance and Payment Bond required under this section have been obtained and submitted to the district. The district reserves the right to automatically revoke Board Award and/or terminate the Offeror for default if the Offeror does not provide Performance and Payment Bonds within ten (10) working days from Board Award Date.
(3) Successful Offeror shall furnish a performance and a payment bond executed by a surety acceptable to the district in an amount of 100 percent of the contract price as security for the completion of the work and for the payment of all persons performing labor and furnishing material in connection with this contract, whether or not they become part of the completed project.
(4) Performance and Payment bonds shall be executed by a surety duly authorized to do business in the State of Texas and licensed by the State of Texas to issue surety bonds. If any such bond is in an amount in excess of ten percent of the surety company's capital and surplus, the District may require, as a condition to accepting the bond, written certification that the surety company has reinsured the portion of the risk that exceeds ten percent of the surety company's capital and surplus with one or more reinsurer who are duly accredited, trusted or licensed and admitted to do business in the State of Texas. The amount reinsured by any reinsurer may not exceed ten percent of the reinsurer's capital and surplus.

f. **IRREVOCABLE LETTER OF CREDIT.** The district may accept an Irrevocable Letter of Credit for low-risk type services as determined by the district. If an Irrevocable Letter of Credit is accepted in lieu of Performance Bond, based upon the district's determination, the financial institution must be subject to the laws of the State of Texas. The letter must state "irrevocable" to be made payable to the district in the amount of 100% of total bid/proposal amount. The district reserves the right to automatically revoke Board Award and/or terminate the Offeror for default if the Offeror does not provide an Irrevocable Letter of Credit within ten (10) working days from Board Award Date. If submitted in lieu of a Bid Bond, the Letter of Credit will be returned to the unsuccessful Offeror(s) within 10 working days after contract award. If the successful Offeror(s) does not execute a Contract and post the applicable Insurance Certificate required by the district, within ten (10) working days after Notice of Award of the Contract, the District shall file a written claim with the financial institution to forfeit the face value amount in whole or in part.

42. **COMPLIANCE WITH STATUTES/CODES.** Offeror's compliance with Federal, State, and Local statutes, codes, guidance, etc. is mandatory in order to obtain and maintain a Contract with the District. The following are a few statutes, codes, etc. that must be followed:

a. **Child Support Certification.** Texas Family Code Section 231.006 (Child Support Certification) states, in part, that (a) A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to: (1) receive payments from state funds under a contract to provide property, materials, or services; or (2) receive a state-funded grant or loan. Offeror certifies that the individual or business entity named in responding to this solicitation or Contract or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated, and payment may be withheld if this certification is inaccurate.

b. **Clean Air and Water Act.** Offeror represents it is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as mended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR, Part 15, as required under OMB Circular A-102, Attachment O, Paragraph 14(1) regarding reporting violations to the grantor agency and to the United States Environmental Protection Agency, Assistant Administrator for the Enforcement.

c. **"No Boycott of Israel".** Offeror certifies that it (and any of its affiliates or parent company), does not, and will not, boycott Israel during the term of any contractual arrangement with Dallas ISD. For purposes of any contractual arrangement with Dallas ISD, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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

e. **Texas Public Information Act (TPIA).** All data and information submitted by the Offeror in response to this solicitation may become public information, as provided by the Texas Public Information Act, Texas Government Code Sections 552.001-552.026. Dallas ISD does not assume responsibility for asserting legal arguments for confidentiality on behalf of the Offeror. Documentation considered confidential and/or proprietary by Offeror must be clearly marked as such prior to submission to the Dallas ISD. Offeror acknowledges that the Dallas ISD is subject to the Texas Public Information Act (TPIA). As such, upon receipt of a request under the TPIA, Dallas ISD is required to comply with the requirements of the TPIA. For purposes of the TPIA, "public information" is defined as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

    1. **By Dallas ISD; [or]**
    2. **For Dallas ISD and Dallas ISD**
        a. **Owns the information; [or]**
        b. **Has a right of access to the information; or**
        c. **Spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or**
    3. **By an individual officer or employee of Dallas ISD in the Offeror's or employee's official capacity and the information pertains to office business of the Dallas ISD.**

    Offeror is expected to fully cooperate with the Dallas ISD in responding to public information requests. This includes, but is not limited to, providing the Dallas ISD with requested documentation. In the event that the request involves documentation that the Offeror has clearly marked as confidential and/or proprietary, Dallas ISD will provide Offeror with the required notices under the TPIA. Offeror acknowledges that it has the responsibility to brief the Attorney General's Office on why the documents identified as confidential and/or proprietary fall within an exception to public disclosure.

f. **"Transactions with an Abortion Provider or Affiliate".** In accordance with Texas SB 22, codified in Texas Government Code Chapter 2272, and effective September 1, 2019, Offeror certifies that it is not an abortion provider, nor an affiliate of such provider as noted in SB 22. Violation or non-compliance of this statute by Offeror will result in the Agreement and/or taxpayer resource transaction being voidable by Dallas ISD and Offeror agrees to defend and indemnify Dallas ISD against any action brought by the Office of the Attorney General for a violation of Section 2272.003.

g. **Other Statutes.** Offeror represents its compliance with other statutes, regulations, etc. as noted on Representations/Certifications Form (or substantially similar document(s)) provided under separate cover but incorporated by reference. Other such statutes include, but are not limited to, Family Educational Rights and Privacy Act (FERPA), Protection of Pupil Rights Amendment (PPRA), Health Insurance Portability and Accountability Act (HIPPA), and Immigration Reform and Control Act.

43. INSURANCE REQUIREMENTS FOR SPECIFIC GOODS/SERVICES.

a. The successful Offeror, at his/her own expense, shall provide and maintain insurance policies in compliance with the following general specifications throughout the duration of the contract, or longer, if noted.

b. Each policy will be issued by a company authorized to do business in the state of Texas with an A. M. Best Company rating of at A-, IV, or better.

c. General liability and auto liability policies will be endorsed to name the district, its officials, agents, and employees as an additional insured, wavier of subrogation in favor of the district, and such insurance is primary and non-contributory to any other insurance available to the additional insured.

d. Workers' compensation policy will be endorsed to provide a waiver of subrogation in favor of the district and coverage must apply to the

workers' compensation laws of the state of Texas.

e. All policies will be endorsed to provide 30 days' prior written notice or cancellation, nonrenewal, or reduction in coverage except ten days for nonpayment of premium.

f. Should any of the required insurance be provided under a claims-made form, the Offeror will maintain such coverage continuously throughout the term of this contract and without lapse for a period of three years beyond the contract expiration such that occurrences arising during the contract term that give rise to claims made after expiration of the contract will be covered.

g. All certificates of insurance submitted to Risk Management must have issue date within the last 30 days.

h. The certificate holder address on all certificates of insurance should read: Dallas Independent School District, Risk Management Services, 9400 North Central Expressway #91, Dallas, Texas, 75231.

i. The following identifies the insurance coverage(s) required based on contract amount and type.

(1) Contracts under $150,000 do not require proof of insurance, unless the Offeror is providing one of the following services: legal services, or medical services, including, but not limited to, psychological services, counseling services, and occupational therapy and/or is providing a service that requires a professional license. If Offeror is performing one of these services and contract amount is under $150,000, the Offeror is required to provide professional liability insurance with limits of $1,000,000 only. All contracts at or over $150,000 require proof of insurance.

(2) If contract is for construction, maintenance, or transportation services, insurance is required regardless of contract amount and must comply with the insurance requirements listed for contracts over $150,000.

(3) **Services provided by sole proprietors, with the exception of medical services** require general liability insurance with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobile with bodily injury limits of $250,000 per person/$500,000 per accident and property damage limits of $250,000; umbrella liability insurance with limits of $1,000,000 per occurrence/$1,000,000 aggregate; and professional liability with limits of $1,000,000 if services provided require a professional license.

(4) **Businesses providing the following type of services—accounting, recreational, student-support, technology, legislative consulting, communication, professional development, curriculum and instructional, insurance, temporary, food, concession, security, moving, architectural, legal, engineering, real estate—and other services determined by Risk Management** shall require Workers' Compensation Statutory Limits; employers' liability with limits of $500,000 per accident/$500,000 per employee/$500,000 policy limit; general liability with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobile with bodily injury limits of $250,000 per person/$500,000 per accident and property damage $250,000; umbrella liability limits of $1,000,000 per occurrence/$1,000,000 aggregate; and professional liability limits of $1,000,000 if services provided require a professional license.

(5) **Medical services** require workers' compensation statutory limits; employers' liability with limits of $500,000 per accident/$500,000 per employee/$500,000 policy limit; general liability with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobile with bodily injury limits of $250,000 per person/$500,000 per accident and property damage $250,000; umbrella liability with limits of $1,000,000 per occurrence/$1,000,000 aggregate; and professional liability insurance (Malpractice) limits of $1,000,000 per occurrence.

(6) **After-School Programs and Nonprofit Organizations** require workers' compensation statutory limits; employers' liability with limits of $500,000 per accident/$500,000 per employee/$500,000 policy limit; general liability with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobile with bodily injury limits of $250,000 per person/$500,000 per accident and property damage $250,000; and umbrella liability limits of $1,000,000 per occurrence/$1,000,000 aggregate.

(7) **Transportation services (Charter Bus Companies)** require workers' compensation statutory limits; employers' liability with limits of $500,000 per accident/$500,000 per employee/$500,000 policy limit; general liability with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobiles with $5,000,000 combined single limits; and umbrella liability with limits of $1,000,000 per occurrence/ $1,000,000 aggregate.

(8) **Armored Car Services** require workers' compensation statutory limits; employers' liability with limits of $500,000 per accident/$500,000 per employee/$500,000 policy limit; general liability with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobile with bodily injury limits of $250,000 per person/$500,000 per accident and Property damage $250,000; and all risk armored car cargo liability $1,000,000 per occurrence.

(9) **Construction and Maintenance** require workers' compensation statutory limits; employer's liability with limits of $500,000 per accident/$500,000 per employee/$500,000 policy limit; general liability with bodily injury and property damage limits of $1,000,000 per occurrence/$2,000,000 aggregate; business automobile liability for owned, scheduled, non-owned, or hired automobiles with bodily injury limits $250,000 per person/$500,000 per accident and property damage $250,000; and umbrella liability limits of $1,000,000 per occurrence/$1,000,000 aggregate. Professional liability with limits of $1,000,000 aggregate is required for construction contracts providing or requiring professional services of architectural, engineering design, surveying, or consulting. Pollution liability with limits of $1,000,000 aggregate is required if hazardous substance is involved. Payment Bond is required for contracts in excess of $25,000. Performance Bond is required for contracts in excess of $100,000. (Both bonds must be for full value of the contract.) Builder's Risk is required for full value of the construction portion of the contract.

Section VI: Special Terms and Conditions

[X] AIA Document A201 – 2017 CMAR General Conditions of the Contract for Construction

[X] AIA Document A133 – 2019 Standard Form of Agreement between Owner and Construction Manager as Constructor

[X] Exhibit A – Scope of Services Overview

[X] Exhibit B – Intent To Propose Form

[X] Exhibit B1 – Excel Workbook Price Offer Summary

DRAFT

AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

The Dallas Independent School District, a political subdivision of the State of Texas
Dallas, Texas
9400 North Central Expressway
Dallas, Texas 75231

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

<<GC Company Name>>
<<GC Address>>
<<GC City/State/Zip>>
(###) ###-#### Phone

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

<<BP# XXX:>>
<<ORG #XXX XX Elementary School>>
<<ORG Address>>
<<Dallas, Texas 75XXX>>

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

<<A/E Company Name>>
<<A/E Address>>
<<A/E City/State/Zip>>
(###) ###-#### Phone

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.

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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Version Dated 10/19/2023

The Owner and Construction Manager agree as follows.

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EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at the time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

«

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

«The Owner will consider recommendations made by the Owner's Design and the Construction Manager team during the preconstruction phase of the project for the Owner to achieve the Owner's planned substantial completion and final completion dates for the project. »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions, and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identity special characteristics or needs of the Project not provided elsewhere.)

«The Owner has published a Construction Cost Limitation (CCL) for this project in the Request for Proposal (RFP) document. The published CCL will be the target budget for the scope of work published in the RFP and it is expected that the agreed-upon Guaranteed Maximum Price (GMP) for the project will be less than or equal to the established CCL. »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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« »

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

.1 Geotechnical Engineer:

« »

.2 Civil Engineer:

« »

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

«The Owner expects the CM to propose a detailed staffing plan and related estimated of reimbursable costs as defined in Article to provide Preconstruction Services in accordance with the terms of Article »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

« »

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately

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adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued before execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager, the request for proposals, and Construction Manager's proof of payment and performance bonds, and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations o,r agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

2.1.1 Note: It is the Owner's intent not to change the provisions of this agreement by inserting different contract terms in the anticipated GMP Amendment(s). If there are any Owner-approved changes to the terms of this Agreement, they must be highlighted and specifically noted as agreed to by the Owner in the GMP Amendment on another form as approved contract modifications. Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment, or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by the Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

2.1.2 The Board of Trustees, 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 changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates Superintendent of Schools or designee authorization to sign all other documents on behalf of the Board of Trustees .

2.1.2 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 4.2 of this Agreement.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect,

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Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.3 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by, or that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, 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.

3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event

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that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously-approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without consent of the Superintendent of Schools or designee. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

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§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

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§ 3.2 Guaranteed Maximum Price Proposal

1. **§ 3.2.1** When all elements of the Construction Documents are at least 90 percent complete, at a time mutually-agreed upon by the Owner, the Construction Manager, and the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, the general conditions; and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without consent of the Superintendent of Schools or designee. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development by the Architect, the Construction Manager shall provide, the Guaranteed Maximum Price for costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 , to supplement the information provided by the Owner and contained in the Drawings and Specification;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the estimated Not-to-Exceed costs of providing: preconstruction services, general conditions, general requirements, conventionally procured liability insurance required by the contract (or the agreed upon costs of a Contractor Controlled Insurance Program), builder's risk *insurance costs, CM's performance and payment bond costs, estimated allowable charges for Subcontractor Default Insurance (SDI) (if applicable)*; and the Construction Manager's Fee at the contractually agreed upon Construction Manager Fee percentage of Cost of Work as defined in this agreement;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) days after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis..

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency").

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The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price.

Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company.

The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price.

Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk.

All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting.

In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner.

Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner.

The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than forty-five (45) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within forty-five (45) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price, any taxes from which Owner is exempt.

3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase, as provided in Section 8.1.2 of A201-2017.

§ 3.3.1.2

§ 3.3.2 Administration
§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 3.3.2.1.1 For scope of work bid packages typically performed by subcontractors, Construction Manager or their teaming partner, or their joint venture partner, may "self-perform" such work on a cost plus fee (not-to-exceed seven and one-half percent (7.5%) basis subject to an agreed upon guaranteed maximum price for the "self-performed work". The Construction Manager must bid their proposed Work to be "self-performed" against at least three non-related party trade contractors submitting responsible bona fide bids and Owner will decide if such bid constitutes the best value for the District. Any subcontract for "self-performed work" will provide for payment in an amount equal to the Cost of the Work (as defined in the Agreement) plus a maximum of 7.5% self-performed work subcontract fee and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for "self-performed work" will be consistent with the terms and conditions of the Agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for "self-performed work" shall be applied to reduce the Cost of the Work under the Agreement and the Guaranteed Maximum Price of the Agreement. For purposes of defining "self-performed work" subject to this Contract provision, any division of Construction Manager, or any separate Construction Manager or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and not a non-interested trade contractor and will be subject to this provision regarding "self-performed work". No self-performed work will be allowed to be performed on a lump sum basis.

Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager. Any joint venture partners and Teaming Agreement partners shall not be qualified to submit bona fide proposals to be used for comparison to the Construction Manager's proposal to self-perform portions of the Work under this section.

3.3.2.1.2 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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3.3.2.1.3 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

3.3.2.1.4 The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

3.3.2.1.5 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee with a GMP basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

3.3.2.1.6 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8.1, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect at any time, including at the meetings referend in paragraph 3.3.2.3 above, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

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3.4 Per Texas Government Code, Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 7 herein.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 4.1.2

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs, including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.2.3 of AIA A201-2017.

§ 4.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

Owner's Board of Trustees designate the Superintendent of Schools or his to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency.

_____.

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§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

§ 4.3 Architect

The Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

4.4 Inspection And Testing

Pursuant to Texas Government Code Section 2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Reimbursable costs for labor and labor burden cost for Preconstruction Phase services and the estimated hours expected to be spent on Preconstruction Services will be documented in an Exhibit to this agreement and are further defined in Article 7 of this agreement. The Exhibit to this agreement covering the estimated reimbursable costs for Preconstruction Phase services will be in a format provided in the Owner's RFP document and all estimated costs shall be subject to audit verification for accuracy and compliance with the terms of Article 7 of this agreement.

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services shall be based on actual verifiable base wages paid to the Construction Manager's employees or to any authorized Consultant firm employees and will include all actual verifiable labor burden costs to be paid or incurred by the Construction Manager or any authorized Consultant firm employees, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions. All allowable labor burden costs will be as defined in Article 7 of this agreement and subject to the limitations included in this agreement. ~~and shall remain unchanged unless the parties execute a Modification.~~

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

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§ 5.2.2 Payments are due and payable within thirty (30) days of receipt of the Construction Manager's invoice and Certification for Payment from the Architect. Amounts unpaid more than thirty (30) days after the invoice receipt from the Architect shall bear interest in accordance with Texas Government Code Section 2251.025
(Note: These blanks should be filled in with "30" if the school board meets more often than once per month, or filled in with "45" if the school board meets once per month).
« » ***(*** « »
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

ARTICLE 6 COMPENSATION FOR PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES
§ 6.1 Contract Sum
§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract in accordance with the terms of this agreement. ~~after execution of the Guaranteed Maximum Price Amendment.~~ The Contract Sum is the Cost of the Work as defined in Articles 6 and 7 plus the Construction Manager's Fee subject to the limitations of the overall approved CCL or approved GMP.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

« » The Construction Manager percentage Fee shall be calculated at the Fee percentage proposed in their competitive RFP proposal which is 2.55% percent. The Fee to be paid monthly will be the agreed upon Fee % times all billable Reimbursable Costs for Preconstruction Services, General Conditions, General Requirements, Bonds, Insurance, Trade Contractor work and other reimbursable costs as further defined in this Agreement and/or the Owner approved GMP Amendments.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« The Construction Manager's Fee to be added or deducted on any approved GMP change order costs will be the same as the percentage documented Article 6.1.2.»

«Change orders to the Approved CCL and/or the Approved GMP are Only by agreement of Owner's Board of Trustees »

§ 6.1.4 ~~Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:~~

~~«See AIA Document A201-2017, Section 7.1.4 »~~ The following terms and conditions will govern the pricing of all change order adjustments to lump sum and unit price subcontracts and any lower-tier sub-subcontract change orders:

It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by Trade Contractors and/or all other lower-tier Subcontractors (all referred to as "Contractor" in this 6.1.4 contract provision. In the event of a conflict between the other contract documents used for the project, this provision will govern. Note: Any provisions of the A201 Article 7 regarding change orders that do not conflict with these A133 contract provisions will also apply. Also note that these provisions do not apply to any cost-plus fee with Guaranteed Maximum Price Subcontracts or Self-Performed Work subcontracts which will be governed by the terms of those special subcontracts.

The contractor agrees that it will incorporate the terms of this contract provision into all agreements with lower-tier Contractors who will also include this provision into agreements with all lower-tier Subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), and unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost-plus Fee change order proposals.

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Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the Contractor in accordance with the pricing provisions found in this contract provision. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost - plus Fee change order proposal as defined in the following provisions.

§ 6.1.4.1 Lump Sum Change Order Proposals: The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, Subcontractors, and Subcontractors regardless of tier. Details to be submitted will include detailed line-item estimates showing detailed materials quantity take-offs, material prices by item, and related labor hour pricing information and extensions (by line item or by drawing as applicable.)

1.1 **Labor**: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the Contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Contract provision. Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expenses will be considered to be covered by the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Contract provision.

1.2 **Labor Burden**: Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for the employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)

1.3 **Material**: Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to “non- Cash” discounts, trade discounts, free material credits, and/or volume rebates. “Cash” discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for the Contractor to take advantage of any such “cash” discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

1.4 **Equipment**: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than $750). For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most

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current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor-owned equipment, the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

1.5 **Maximum Markup Percentage Allowable on Self-Performed Work**: With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not to exceed fifteen percent (10%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.

1.6 **Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:** With respect to pricing the portion of change order proposals involving work performed by lower-tier Contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower-tier Contractor's work shall not exceed five percent (4%) of the net of all approved change order work performed by all Contractors combined for any particular change order proposal.

1.7 **No Markup on Bonds and Liability Insurance Costs:** Change Order cost adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.

1.8 **Direct and Indirect Costs Covered by Markup Percentages**: As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than $750.

1.9 **Deduct Change Orders and Net Deduct Changes**: The application of the markup percentages referenced in the preceding paragraphs 1.6 and 1.7 will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs 1.6 and 1.7 so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted, and the markup percentage adjustments will be applied to the net amount.

1.10 **Contingency:** *In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.*

1.11 **Change Order Proposal Time and Change Directives:** The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar

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days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

1.12 **General Liability Insurance and Bonds:** In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or net bond premium costs associated with change orders to Contractor's base contract price. Note: If a change order or a separate payment is made to reimburse the Contractor for the cost of a Performance and/or Payment Bond. The Contractor will be required to remit any bond dividend, rebate, or credit that it will receive from the Surety after the successful completion of the project.

2.1 **Unit Price Change Order Proposals:** As an alternative to Lump Sum Change Order Proposals, the Construction Manager acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.

2.2 The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

2.3 Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Contractor's Markup Percentage Fee.

3.1 **Cost Plus Change Order Proposals**: As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost-plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee.

The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in subparagraphs 1.1 through 1.13 above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for

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both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost- plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.

4.1 **Accurate Change Order Pricing Information*:*** Contractor (Subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a Subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific Subcontractor or supplier for the approved change order work.

4.2 **Right to Verify Change Order Pricing Information:** Contractor, Subcontractor and sub-sub- Contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, Subcontractor or sub-sub Contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding the pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of Contractors and/or Subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.

4.3 **Requirements for Detailed Change Order Pricing Information:** Contractor, Subcontractor, and all lower tier Contractors agree to provide and require all Subcontractors and sub-Subcontractors to provide a breakdown of allowable labor and labor burden cost information. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed-upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed-upon labor cost components are determined to be inaccurate.

5.1 **Discounts*:*** If a Contractor enters into an agreement to pay a Subcontractor before they receive payment from the Owner and in return they negotiate an early payment discount, the amount of any such discount that the Contractor is allowed to keep as a "cash discount earned" will be limited to one and ½ percent (1.5%) of the costs subject to discount. Any percentage of discount greater than 1 and ½ percent (1.5%)% shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases and change orders as applicable.

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

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.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and the Owner shall sustain actual and direct damages as a result of the Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute an agreement by the Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by the failure of the Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such a delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utility costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion shall be construed as a breach of this Agreement

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1, 500.00 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. The construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should the Construction Manager fail to achieve Final Completion of the Agreement by the deadline, the Owner shall continue to be damaged to a greater degree by such delay. The Construction Manager and Owner agree that the number of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500.00 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies the Owner may have against the Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

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§ 6.1.12 ~~Other:~~

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« »

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as provided in the Construction Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner, with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The

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Owner shall issue such changes in writing. Either the Construction Manager or the Owner, as appropriate, may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment, may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee with a GMP shall be calculated in accordance with the terms of those subcontracts which shall conform to the terms of this agreement as far as costs to be reimbursed.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

~~**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly~~.

ARTICLE 7 COST OF THE WORK FOR PRECONSTRUCTION AND CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean the following direct, actual and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.1.4 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this agreement.

7.1.5 Preconstruction Phase Services, General Conditions and General Requirements All charges, if any, for preconstruction phase services, general conditions, and general requirements (i.e. costs to be reimbursed) shall be delineated separately in an Exhibit to this Agreement in the detailed format that was included in the Owner's RFP. (***Note***: It is the intent of Owner that the approved estimated amount of Preconstruction Services, General Conditions Costs, and General Requirements Costs will be a negotiated Not-To-Exceed amount approved by Owner when this Agreement is approved. It is agreed that the total agreed upon amounts for Preconstruction services, General Conditions, and General Requirements will treated as a Not-To-Exceed Limit and will not be treated as a Fixed price or Lump Sum amount. The approved Not-to-Exceed amount approved in the Exhibits to this Agreement will be incorporated into the approved GMP amendments and will be subject to equitable adjustment in accordance with the provisions in Article 7 of the A201 contract document associated with this agreement in the event that the agreed upon schedule for preconstruction services and/or the project completion dates are extended. If the equitable adjustments are the result of the Owner's changes to the approved scope of work or the approved schedule, the approved equitable adjustment to the Not-To-Exceed amounts for these costs will be funded first from any available Owner Contingency funds.

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§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.257.

§ 7.2.2 *Intentionally deleted.* Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work at the site or are ~~and~~ stationed at a location other than the site, but only for that portion of time required for the Work and are directly attributable to and required for the Work, and are approved by the Owner in the Exhibits attached to this agreement.
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and are directly attributable to and required for the Work and are approved by the Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3 Reimbursable labor and labor burden costs will be limited to the actual verifiable base wage costs of employees plus any applicable auto allowances paid directly to employees plus the actual allocable costs of payroll taxes, worker's compensation insurance, and the actual verifiable costs of benefits including paid time off. However, the maximum that will be considered reimbursable labor burden will be limited to 40% of the taxable base wages of reimbursable employee wages not including the taxable portion of any auto allowances and employer payroll taxes due on auto allowances paid to the employees.

§ 7.2.5 ~~If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts approved to be awarded by Owner will be reimbursable as Cost of Work per this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1 and 3.3.2.2, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such self-performed Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work as a Guaranteed Maximum Subcontract amount and will be reimbursed on a cost plus subcontract fee basis with a guaranteed maximum for the proposed amount equal to the bid or proposal for the scope of work submitted in accordance with the terms of Section 3.3.2.1.1 which states that no self-performed work will be allowed to be performed on a lump sum basis..

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of

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the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Billable rental rates for Construction Manager owned equipment will be limited to a maximum of 75% of the applicable retail rental rates published by Equipment Watch (adjusted for Dallas, Texas) or 75% of applicable local competitive local rental rates for any equipment not specifically listed by Equipment Watch. The maximum rental charges for Construction Manager or Trade Contractor Owned equipment will be 50% of the fair market value of the equipment when it was first used on the job. Once the rental charges reach 50% of the fair market value the equipment will remain on the job as long as needed with no further rental charges. The Construction Manager or applicable Trade Contractor will retain ownership of the equipment when it is no longer needed for the job.

§ 7.5.3 ~~C~~osts of removal of debris from the site of the Work and its proper and legal disposal, and the costs of final clean-up.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored on-site or off the site at a mutually acceptable location, subject to the Owner's prior written approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents ~~that can be directly attributed to this Contract~~ subject to the limitations and other provisions of this agreement. Construction Manager will credit Owner with the amount of any applicable bond or insurance policy rebates or dividends received or due to be received in connection with the project (plus the approved Construction Manager percentage Fee) whether or not the rebates or dividend(s) are received before or after the final payment is made for the project.

§ 7.6.1.1 *Intentionally deleted.* The maximum cost to be reimbursed to the Construction Manager for the premiums paid to secure the required performance and payment bond for the project will be the agreed upon percentage of the CCL or the total amount of the approved GMP that was stated in the Owner's RFP document. This percentage limitation will be applied to the bond premiums required to paid before any cost reduction that becomes available from a bond dividend or a return premium due to savings.

7.6.1.1.1 The Owner will reimburse the Construction Manager for the cost of any Performance and Payment bonds purchased to cover subcontracts with values expected to exceed $500,000. The Construction Manager shall require the Subcontractor whose bids are expected to be more than $500,000 to provide bid bonds when submitting their bids. The subcontractors will also be required to provide add alternate bid estimate of the maximum cost to furnish a performance and payment bond. The subcontractor will be required to furnish an invoice from their bonding company and a copy of the performance and payment bonds in their first change order request for their contract as long as the cost of the bond is not more than the maximum amount they included in their bid alternate to furnish an acceptable performance and payment bond. Any bond dividends expected to be received by subcontractor upon successful completion of their contract work will be credited in a close-out credit change order to their subcontract. If Construction Manager elects to purchase performance and payment bonds from subcontractors with subcontract values less than $500,000 the associated costs will not be considered reimbursable and will be considered to be covered by the Construction Manager's FEE.

§ 7.6.1.2 *Intentionally deleted*. The amount to be reimbursed to the Construction Manager for all contractually required liability insurance will be actual costs not to exceed a total of .6% of the net reimbursable Cost of Work (but not including the allowable charges for liability insurance or the Construction Manager Fee). If the Construction Manager's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Construction Manager's FEE. The allowable charged to cover required liability insurance will be considered to cover the cost of any liability insurance claims and any related deductibles. Any liability insurance costs not covered by the allowable maximum percentage stated in this agreement will be considered to be covered by the contractor's fee. *Note: If the Owner elects to allow the Construction Manager to use a Contractor Controlled Insurance Program (CCIP) in accordance with Article 7.6.1.4 there will be no other liability insurance charges allowed to be reimbursed other than the agreed upon maximum % for CCIP*.

7.6.1.3 In the event that the Construction Manager elects to utilize a Subcontract Default Insurance program (SDI or SUBGUARD®), the maximum amount to be considered reimbursable costs under this contract will be .75% of the total

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amount of subcontracts enrolled in such an insurance program. Reimbursement for enrollment in any such program will be limited to subcontracts in excess of $500,000. Any Construction Manager costs incurred in connection with the Construction Manager's elected SDI program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's FEE. In the event the Construction Manager elects to bond any subcontract over $500,000 rather than enroll them in their SDI program, the net cost to purchase any such subcontract performance and payment bonds will be reimbursed in lieu of the .75% Note: Construction Manager will not be reimbursed for any deductibles stated in the Subguard policy. The deductible is considered covered by the .75% and/or the Construction Manager FEE. Any SDI coverage provided by the Construction Manager shall extend to any additional costs incurred for the Construction Manager to replace or supplement the forces of a subcontractor to provide the Work, and such circumstances shall include, but not be limited to, any partial or full termination of the contract of a subcontract for convenience or otherwise.

7.6.1.4 In the event that the Construction Manager elects to utilize a Construction Manager Controlled Insurance Program (CCIP) and if such a program is specifically authorized by Owner, the maximum to be considered reimbursable costs under this contract will be the CCIP percentage quoted in the response to the Owner's RFP. This percentage will be applied to the actual allowable Cost of the Work (including preconstruction, general conditions costs, general requirements costs, and all other costs defined as reimbursable) but not including Construction Manager Fee or CCIP charges. The CCIP cost factor will cover all insurance required to be carried by the prime Construction Manager and all applicable subcontractors this agreement. Any Construction Manager costs incurred in connection with the Construction Manager's costs related to the elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Construction Manager's FEE. Note: Construction Manager will not be reimbursed for any deductible stated in the CCIP policy. The deductible is considered covered by the allowable CCIP charges and/or the Construction Manager FEE. *Note: In the event that the Construction Manager does not provide CCIP insurance for any subcontractors working on the project, the costs of the subcontract that is not enrolled in CCIP will not be included in the calculation of allowable CCIP charges.*

7.6.1.5 Construction Manager will be reimbursed for the actual cost of insurance premiums paid to purchase Builder's Risk Insurance required by this agreement.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work, but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions. Note: It is the Owner's understanding that Texas sales tax is not applicable to the cost related to dumpsters and related dumpster services required for the project.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 *Intentionally deleted.*

§ 7.6.6 *Intentionally deleted.* The Owner will reimburse the Construction Manager for the actual verifiable allocable costs of using Owner approved and Owner accessible cloud-based applications such as Procore, Sensei, Owner-Insite, Construction Viz, PAMS, Smart Bid by Construct Connect, LCP Tracker for submitting Certified Payrolls, Site TRAX for on-site badging, Earth CAM or OxBlue or Multi-Vista for on-site photo history, OxBlue, Textura for processing subcontractor payment applications, or similar and comparable Construction and Project Management Software system to be preapproved by Owner. The specifics related to the proposed use of such applications and their related costs will be specifically itemized in the estimate of reimbursable preconstruction costs, general conditions and general requirements costs required to be submitted with Construction Manager's response to the Owner's RFP.

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7.6.6.1 The actual allocable costs of hardware related to personal computers, tablets and cell phones provided to employees working on the project will be considered reimbursable.

7.6.6.2 The costs of software applications such as Microsoft Office Suite, Project Online, Blue Beam, Primavera Scheduling will be considered overhead and not considered reimbursable, and as such will be considered to be covered by the Construction Manager's FEE. Further any costs of BIM software, Information Technology support services, and any other Construction Manager data processing applications, accounting applications, and similar project management applications used by Construction Manager shall also be considered non-reimbursable overhead and covered by the Construction Manager's FEE.

§ 7.6.7 *Intentionally deleted.*

§ 7.6.8 . Deposits lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 *Intentionally deleted.*

§ 7.6.10 *Intentionally deleted.*

§ 7.6.11 *Intentionally deleted.*

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work that are directly attributable to and required for the Work, and are approved by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 *Intentionally deleted.*

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager (such as a Teaming Partner); (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party (including any approved Teaming Partner), the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office unless authorized to work on Preconstruction Services and approved in the personnel listing included in the agreed upon Exhibit to this agreement or except as specifically provided in Section 7.2, or as may be provided in Article 14;

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.2 Any costs incurred by Construction Manager which are in excess of the specific limitations on specific reimbursable costs as addressed in Article 7 of this agreement. Examples of such limitations include but are not limited to the 40% maximum for allowable labor burden on base wages, the .75% limit on charges for Subcontractor Default Insurance (SDI) on subcontracts, the .6% limit of charges for all required liability insurance, the limit of the allowable charge for the Construction Manager's performance and payment bond, the limit on charges for any approved Contractor Controlled insurance Program (CCIP).

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, ~~except as may be expressly included in Sections 7.1 to 7.7~~;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

.7 Any cost described as non-reimbursable anywhere in this agreement; ~~Sections 7.1 to 7.7;~~

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

~~.9 Costs for services incurred during the Preconstruction Phase;~~

.10 Delay damages or claims;

.11 Storage costs, unless with prior written owner approval;

.12 All costs intentionally excluded in Article 7 above, including all subsections.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has a reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same

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audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. The Construction Manager shall use an authorized electronic bid service to receive and hold all bids confidentially until the designated bid opening date and time (or establish a process where sealed bids are delivered to the Owner's designated procurement representative when they will be held unopened until the designated bid opening date and time. An authorized Owner's representative will be allowed to be present when all sealed bids are received and opened whether the bids are electronic or hard copies.
f

9.4 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages under Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety is required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Requests for Proposals, or Bid Documents:

"By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. The owner shall decide whether or not the Construction Manager's proposal for self-performing portions of the Work offers the best value to the Owner. In opening proposals, neither the Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, under progress payments, as if Construction Manager were a subcontractor. Such payments to the Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Under Texas Government Code Chapter 2269, Subchapter F, if during recommending proposals, the Construction Manager recommends to the Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before the Owner compensates the Construction Manager. Reimbursement for Self-performed work will be in accordance with Article 3.3.2.1.1.

9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill

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the contract requirements. The Construction Manager shall be paid for its performance in accordance with Section 9.6 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager and all subcontractors shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager and all subcontractors shall preserve these records for ten (10) years after the date of Final Completion, or such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 « » « » « » « » (« ») The Construction Manager shall submit monthly Applications for Payment to both the Architect and the Dallas ISD Construction Services department, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and the Dallas ISD Construction Services department, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and the Dallas ISD Construction Services department, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the job site or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and the Dallas ISD Construction Services department, if applicable, shall have seven (7) days from the date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and the Dallas ISD Construction Services department, if applicable, to the Construction Manager within forty-five (45) days, if the Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect the Dallas ISD Construction Services department, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest under Texas Government Code Section 2251.025.

(Federal, state, or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

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§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Dallas ISD Construction Services department, if applicable, may require. The format and tracking method of the original schedule of values and all updates to the schedule of values shall be subject to the approval of the Architect and the Dallas ISD Construction Services department, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to the Construction Manager by the Owner shall be reduced by the amount of such excess.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed portion or (2) classification on the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

.1 That portion of the Guaranteed Maximum Price is properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values. Pending final determination of the cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Article 7 of AIA Document A201–2017;

.2 That portion of the Guaranteed Maximum Price is properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier unless the Work has been performed by others the Construction Manager intends to pay;

.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;

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation; and

.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2017

.7 Retainage withheld under Section 11.1.8.

.8 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment.

.9 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

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

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and the Dallas ISD Construction Services department, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims;

.4 Subtract withheld payments under Section 11.1.3.

11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Construction Manager for down payments, deposits, or other advance payments for materials or equipment. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

11.1.7.4 In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

11.7.5 The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors.

11.7.6 Except with the Owner's prior written approval, or as otherwise provided in Section 9.3.2 of the AIA Document A201-2017, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

11.7.8 In submitting Construction Manager's Applications for Payment, the Construction Manager shall be responsible for all errors and omissions. The owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made before Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

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(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 (5%) percent »

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«N/A »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to the written consent of the Construction Manager's Surety, and as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

«N/A »

§ 11.1.8.3 Except as outlined in this Section 11.1.8.3, upon Final Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Final Completion shall not include retainage as follows:
(Insert any other conditions for release of retainages, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

«N/A »

§ 11.1.9 If the final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager shall submit a claim in accordance with Article 15 of AIA Document A201–2017.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from the Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In submitting Construction Manager's Applications for Payment, the Construction Manager shall be responsible for all errors or omissions. The Owner shall not be responsible for Construction Manager's errors or omissions. g

§ 11.2 Final Payment

§ 11.2.1 Final payment for each Work, if multiple Projects), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, including the Construction Manager's responsibility to correct Work except for the Construction Manager's responsibility to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

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.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by the Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable in accordance with Section 11.2.2.2;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized.

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and

.6 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

§ 11.2.2 Within sixty (60) days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditor's or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect.

Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after Board approval. The Construction Manager must certify completion of all Work, including all listed items in Section 9.10.2 of the AIA Document A201-2017 for the Project, cleanup, and delivery of record documents before or with the Application for Final Payment.

« »

11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

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.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses, or withholds payment if any.

.5 If the Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts, and fees.

.6 If the Construction Manager fails or refuses to complete the Work, or has unsettled claims with the Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

.9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, after final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the rate permitted by law, in accordance with Texas Government Code Chapter 2251.
(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions outlined in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2

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

« »
« »
« »
« »

12.1.3 When the Owner has an applicable claim for construction defects, the Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

§ 12.2

(Check the appropriate box.)

[« »]

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

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[« »] *(Specify)*

« »

If the Owner and Construction Manager do not select a method of binding dispute resolution or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction with the proper venue being the county where the Project site is located.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed before receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed before receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but before the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take a legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vested in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts the assignment of subcontracts, purchase orders, or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order, or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept 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 Construction Manager will terminate the subcontract, purchase order, or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take a legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vested in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3

« »

§ 13.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price, if established, and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017, as amended for the Project.

ARTICLE 14 MISCELLANEOUS PROVISIONS
§ 14.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017, as amended for the Project. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns
§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustees. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent the Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with the law, but Construction Manager shall be fully responsible to the Owner for the work, actions, and omissions of all such subcontractors.

§ 14.2.2

§ 14.3 Insurance and Bonds
§ 14.3.1 Preconstruction Phase
The Construction Manager shall purchase and maintain insurance as required by Article 11, A201-2017, as amended for this Project, and AIA A133 Exhibit B to protect the Construction Manager and Owner against all claims, damages,

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lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Article 11 and AIA A133, Exhibit B.

§ 14.3.1.1 « » (« ») « » (« »)

§ 14.3.1.2 « » (« »)

§ 14.3.1.3

§ 14.3.1.4 « » (« ») « » (« ») « » (« »)

§ 14.3.1.5 « » (« ») « » (« »)

§ 14.3.1.6

§ 14.3.1.7

§ 14.3.1.8

§ 14.3.2

§ 14.3.2.1

§ 14.4

« »

§ 14.5

«

14.4 Criminal History Checks

14.4.1 Construction Manager shall obtain all criminal history information required by Texas Education Code Chapter 22 regarding its "covered employees," as defined below. If Construction Manage is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Construction Manager will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Construction Manager will provide written certification to the District that the Construction Manager has complied with the statutory requirements as of that date. Upon request by the Owner, Construction Manage will provide, in writing; updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Construction Manager shall assume all expenses associated with obtaining criminal history record information.

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

14.4.3 For the purposes of this Section, "covered employees" means employees, agents, or applicants of the Construction Manager who has or will have continuing duties related to the services to be performed on the Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with the Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060, and 19 Texas Administrative Code Section 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

14.4.4 Subcontractors or any subcontractor entity, as defined by Texas Education Code Section 22.08341(a)(3), shall be required by the terms of their contract with the Construction Manager or any other contracting entity (as defined in Texas Education Code Section 22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

14.4.5 On request of Owner, Construction Manager shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Construction Manager and all subcontractors. The Construction Manager shall update this list at the Owner's request.

14.4.6 Owner's Additional Requirements Related To Criminal Histories
In addition, the Construction Manager will at least annually obtain criminal history record information that relates to any employee, agent, or applicant of the Construction Manager, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. The Construction Manager shall assume all expenses associated with the background checks and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from the Owner's property, or other location where students are likely to be present. The Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

14.5
14.5.1 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition, or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

14.5.2 Construction Manager shall require all construction workers, whether Construction Manager's forces, or the forces of Construction Manager'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 the identification of the construction worker by number or another identifying medium in a typeface large enough to be seen from a reasonable distance.

14.5.3 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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14.5.4 Construction Manager stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, the Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

14.5.5 This Agreement is subject to all applicable federal and state laws, rules, and regulations. The invalidity of any portion of this Agreement under the laws of the State of Texas or the United States shall not affect the validity of the remainder of this Agreement. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

14.5.6 By executing this Agreement, the Construction Manager verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Under Texas Government Code, Chapter 2271, as amended, if Construction Manager is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Construction Manager represents and warrants to the Owner that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

14.5.7 Construction Manager 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 Construction Manager has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

14.6
14.6.1

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

.2 The Construction Manager must:

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

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

.3 On completion of the Contract, either:

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

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

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

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous

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bid or contract to comply with Subchapter J unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

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

.6 If Construction Manager is not a sole proprietorship, has ten (10) or more employees, and the value of the Construction Manager's bid or proposal has a value of $100,000 or more, the Construction Manager certifies by submitting Construction Manager's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner unless excepted from that law.

.7 As required by Texas Government Code Ann. Chapter 2274, if Construction Manager has ten (10) or more employees, is not a sole proprietorship, and if the value of the Construction Manager's bid or proposal has a value of $100,000 or more, the Construction Manager certifies by submitting Construction Manager's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner unless excepted by that law.

14.7 The Construction Manager verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 :

(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

.6 Other Exhibits:
(Check all boxes that apply.)

[**« »**] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

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

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the bidding requirements such as an advertisement or invitation to

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bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, the Construction Manager's bid, 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 Contract. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

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

«DALLAS INDEPENDENT SCHOOL DISTRICT »

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Dwayne Thompson, Chief Business Officer	« »« »
(Printed name and title)	*(Printed name and title)*

Approved As To Form:

_____

DALLAS ISD LEGAL COUNSEL*(Signature)*_____Date____

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AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

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

BP# XXX: ORG #XXX XX Elementary School
School Address
Dallas, Texas 75XXX

THE OWNER:
(Name, legal status and address)

The Dallas Independent School District, a political subdivision of the State of Texas
9400 North Central Expressway
Dallas, Texas 75231

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

PMF Name
PMF Address
PMF City/State/Zip
«»«»
«»

THE ARCHITECT:
(Name, legal status and address)

A/E Name
A/E Address
A/E City/State/Zip

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1 GENERAL PROVISIONS

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3 CONTRACTOR

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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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11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

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Version 10/27/2022

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents consist of the Contract between Owner and Contractor, A101- 2017, as amended, OR the Contract between the Owner and Construction Manager at Risk A133-2019, as amended, and the A133-2019 Exhibit A (hereinafter the ~~Agreement~~Contract); Conditions of the Contract as amended (General, Supplementary and other Conditions, including but not limited to A201-2017, as amended); Contractor's proof of Payment and Performance Bonds and proof of insurance, ~~are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents (as defined in Section 1.1.3 below) including~~ Drawings, Specifications, and Addenda issued prior to receipt of bids or proposals, ~~to execution of the Contract,~~ other documents listed in the ~~Agreement~~Contract, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the ~~Agreement~~Contract, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, Contractor's bid or portions of Addenda relating to bidding requirements). All sections of the Project Manual shall be a part of the ~~Agreement~~Contract. In the event of conflict, terms and conditions contained in the ~~Agreement~~Contract, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended. The terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.~~

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

§ 1.1.2 The Contract

The Contract Documents form the Contract for ~~Construction~~Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification signed by the Contractor, approved by Owner's Board of Trustees, and signed by the representative of the Owner's Board of Trustees who is authorized to sign contracts. As a material consideration for the making of the Contract, modifications to the Contract shall not be constructed against the maker of said modifications. 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 of the Contractor;~~,~~ (3) between the Program Manager and the Contractor~~between the Owner and the Architect or the Architect's consultants~~, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

The Program Manager and/or Architect shall, however, be entitled to performance and enforcement of obligations of the Contractor under the Contract intended to facilitate performance of the duties of the Architect and/or the Program Manager.

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1.1.2.1 To be effective, all Contract Documents including the A201-2017, as amended requiring signatures must be signed first by the Contractor representative and then by the Owner's authorized representative, after approval by Owner's Board of Trustees. If an approved Contact Document requiring Contractor's signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure of Contractor to sign an approved Contract Document after notice and a reasonable opportunity to sign, shall be considered a material breach of the Contract by Contractor.

§ 1.1.3 The Work; Construction Documents

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

"Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish, in detail, the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC § 61.104036, and the standards set forth in the Owner's architect agreement Section 3.1.4 of AIA document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

§ 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 or by Separate Contractors.

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments PROJECT MANUAL of Service

Construction InstruDocuments of Service are include representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Construction InstruDocuments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.8 PROGRAM MANAGERSInitial Decision Maker

The Owner may use Program Managers to carry out some of the functions of 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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~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

1.1.9 Addenda

Addenda are written or graphic instrument issued by the Owner ~~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 and Construction Documents when the Contract is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

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

1.1.11 ~~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(s) (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(s) including the assignment of the Program Manager, may be changed by Owner during the Project.~~[Omitted]

1.1.11 Approved, Approved Equal, Approved Equivalents, Or Equal

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

1.1.12 Abbreviations

AIA:	American Institute of Architects. (All references to AIA documents refer to AIA's trademarked documents. Each reference to a specific document shall refer to the documents as amended for this Project.)
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
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
TAS:	Texas Accessibility Standards
UL:	Underwriters Laboratories, Inc.

1.1.13 Bids or Bidding The term "Bids" or "Bidding" shall include any kind of competitive purchasing under Texas Government Code Chapter 2269.

1.1.14 Miscellaneous Other Words

1.1.14.1 Business Day

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

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

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

1.1.14.4 Work Day
Work days are all calendar days except Holidays.

1.1.14.5 Anticipated Weather Days
An allowance of regular Work Days, established as anticipated Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. ~~Section 15.1.5.3 lists required Anticipated Weather Days.~~

1.1.15 Contract Sum
"Contract Sum" shall have the same meaning as in Section 5.1 of the Contract (A133-20~~10~~09), for the Project when the Project is a Construction Manager at Risk Project OR the same meaning as in Article 4 of the Contract (A101-2017) for the Project.

§ 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.~~ The most recently issued contract document takes precedence over previously issued forms of the same document. Figures given on Drawings govern scale management, and large-scale details govern smaller scale Drawings. If an item is shown one place in the Drawings, but not another, or called for in a schedule or the specifications but not shown on the Drawings or shown on the Drawings but not in a schedule, it is to be included. Existing conditions take precedence over Drawings and Specifications for dimensions.

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 he shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of his 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 interpretation shall be final. The terms and conditions of this clause shall not relieve any part 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.

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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 more expensive combination of quality and quantity of work indicated. For purposes of construction, the Architect shall determine 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.

1.2.5 ~~Optional Materials, Equipment and Processes~~Materials, Equipment, and Processes

Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment 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 Contract Documents which results in equipment requiring more area than shown on the Contract Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified, 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. The Architect shall review and respond to proposed substitutions within fifteen (15) days of receipt. 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. Contractor shall bear all related costs associated with the substitution. Certain special 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 function of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved 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 quality of equipment and materials that deviate from any of the indicated and specified requirements.

~~1.2.5.1Product and Reference Standards~~

~~When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices which the Contractor knows, or in accordance with the standard of care for a General Contractor should have known, is necessary for proper functioning shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required and no edition is specified by the Contract Documents, the current edition at the time of Contract execution shall apply whether or not the proper edition was set out in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except:~~

~~.1 They do not supersede more stringent standards set out in the Contract Documents, and~~
~~.2 Any exclusions or waivers that are inconsistent with the Contract Documents do not apply.~~

1.2.6 Standards And Requirements

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the date of execution of the Contract by the last party to execute said Contract shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the date of execution of the Contract and until Final Completion, pursuant to the terms of the Contract between Owner and Architect. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

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§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses in the documents., 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 Construction Documents, are controlled by the Contract between the Owner and ~~T~~the Architect ~~and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights~~. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the ~~Instruments of Service~~Construction Documents. 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~~the Architect's or Architect's consultants'~~ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license~~authorized~~ to use and reproduce the Construction Documents~~Instruments of Service~~ provided to them, subject to any protocols established pursuant to Section~~s~~ 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 Construction Documents~~Instruments of Service~~. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the ~~Instruments of Service~~Construction Documents on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants. All copies of the Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

1.5.3 The Drawings, Specifications and other Documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim copyright in the Drawings, Specifications and other documents prepared by the Architect or Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the written consent of the Owner, Architect and Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants copyrights or other reserved rights.

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§ 1.6 Notice

§ 1.6.1 ~~Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; if delivered at, or sent by registered or certified mail, or by courier service providing proof of delivery to the last business address known to the party giving notice, or if sent by electronic facsimile transmission, to the last business number known to the party giving notice, with electronic confirmation of receipt; or, if sent by electronic mail, to the email address of the Owner's or Contractor's designated representative, with electronic confirmation of receipt.

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

§ 1.7 Digital Data Use and Transmission

If ~~T~~the parties intend to transmit Construction Documents or any other information or documentation in digital form, they shall endeavor to establish necessary~~shall agree upon~~ protocols governing such~~the~~ transmissions, unless otherwise already provided in the Contract or the Contract Documents ~~and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data~~.

§ 1.8 EXECUTION OF CONTRACT DOCUMENTS

1.8.1 The Contract Documents must be signed by the Owner and Contractor. The ~~Agreement~~Contract between Owner and Contractor, as amended, including Conditions of the Contract, as amended, as well as all other Contract Documents that required signature of the Parties, including the A201-2017, as amended, must be signed first by the Contractor's representative. . After signing the ~~Agreement~~Contract and all other Contract Documents requiring signature, Contractor shall return the Contract Documents along with proof of insurance and payment and performance bonds to Owner. Once Owner has approved of the Contract Documents and the proof of insurance and payment and performance bonds, Owner shall sign the ~~Agreement~~Contract and all other Contract Documents requiring signature of the parties. When Owner has signed and approved all required documents, District shall issue a Notice to Proceed to Contractor.

1.8.2 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. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect, the Program Manager and Owner, and Architect will issue a written Architect's Supplemental Instruction to all parties that is consistent with the Owner's Scope of the Work.

~~Building Information Models Use and Reliance~~

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the independent school district ~~oe enity~~ ~~person or entity~~ identified ~~as such in the Agreement and is referred to throughout~~ in the Contract Documents ~~as if singular in number~~. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to, AIA Document A133 Exhibit A; approve changes in the scope of the Work; approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board ~~shall~~

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designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized ~~in writing a~~ representative ~~who~~ shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. ~~have express authority to bind the Owner~~ Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons ~~with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority~~. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~

§ 2.1.2 ~~The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein~~ It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings of any of the improvements are so erected, built, or situated, such property belonging to a political subdivision of the State of Texas. It shall be further understood that this Contract is not written for the benefit of their parties.

2.1.3 The Owner shall require the Contractor and the Architect to 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 relationship which may otherwise exist.

2.1.4 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.

2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications, and other Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Contract with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications, or other Construction Documents.

§ 2.2 ~~Evidence of the~~ Owner's Financial Arrangements

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, t~~The Owner, being a public body under the laws of the State of Texas, must have adequate funds and/or financing as provided by law prior to award and execution of ~~shall furnish to~~ the Contract~~or~~ Documents~~reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately~~.

§ 2.2.2 At any time prior to the Owner's receipt of the executed ~~Agreement~~Contract with the required bonds and insurance, the Owner may, at its sole option and without cause, reject the offer described in this ~~Agreement~~Contract by delivering to the Contractor a written notice stating so. Such notice shall be signed by the Owner's Director of Purchasing or designee and shall be effective on receipt by the Contractor. The rejection of the offer described in this ~~Agreement~~Contract shall cause no obligation or duty to the District save return of bid or proposal security, if any, if rejection is without cause. This paragraph does not pertain to rejection for cause by the Owner, or for the Contractor's failure to provide required bonds or insurance ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until~~

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~~reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

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

§ 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.

§ 2.3.2 The "Architect" is the person ~~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~~ identified as such in the ~~Agreement~~Contract and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if successor architect has been employed by Owner. The term "Architect" means the Architect or the Architect's authorized representative.

§ 2.3.4 If requested to do so, in writing, by Contractor, prior to start of the Work, ~~T~~the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~ The survey shall not relieve 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 reasonably necessary for the Work and under the Owner's control shall be furnished by the Owner with reasonable promptness where requested in writing by the Contractor. Under normal circumstances, fourteen (14) District Business days will be considered a reasonable time for Owner response. In any circumstance where information or services from the Owner, Program Manager or Architect is required, Contractor shall promptly notify in writing the Architect, with copy to the Program Manager, of the particular need. Absent such notification, any Claim based upon lack of such information or services shall be waived.~~The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Absent such timely notification, any Claim based upon lack of such information or services shall be waived.~~

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Construction~~act~~ Documents, as provided for in the Project Manual, for purposes of making reproductions pursuant to Section 1.5.2.

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§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to fails to correct non-conforming or defective Work, fails to correct Work which is not in accordance with Contract Documents, or ~~correct defective Work, fails to correct Work that is not in accordance with the requirements of the Contract Documents or the Construction Documents as required by Section 12.2 or repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity~~, except to the extent required by Section 6.1.3~~. The authorized Owner's representative having the legal right to stop the Work shall be limited to the Owner's Superintendent of Schools or designee.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and t~~The Architect ~~may~~shall, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's, Program Manager and other consultants' additional services, if any, made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, then the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, then the Contractor may file a Claim pursuant to Article 15.

2.5.1 After the Work is complete the Owner may make emergency repairs to the Work if necessary to prevent further damage, or if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

2.6 OWNER'S OCCUPANCY

Contractor agrees that the Owner may place and install as much equipment and furnishings during the progress of the building as is possible before completion of various parts of the Work, or may occupy portions of the Work before substantial completion of the entire Work, and further agrees that such placing and installing of equipment and furnishings or occupancy of portions of the Work shall not in any way evidence the substantial completion of the entire Work, or signify Owner's acceptance of the Work, nor does it affect claims for liquidated damages in case Substantial Completion is not achieved as required unless the failure to reach Substantial Completion is the result of the early move-in or occupancy. Owner will accept the responsibility for any damages to the Work caused by such occupancy.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the ~~Agreement~~Contract 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, and includes the Construction Manager at Risk, if applicable.

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

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

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representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

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

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

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

.4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.~~ The Contractor represents and warrants by submission of a Proposal that he has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports, and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work The Contractor shall not be entitled to any additional time or compensation for any additional work caused by the Contractor's fault, improper construction, or by Contractor's failure to carefully study and compare the Contract Documents to actual observable site conditions prior to execution of the Work.

§ 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 Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are ~~not~~ for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; ~~however,~~ the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. ~~It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect.

§ 3.2.3 Neither the Owner nor ~~T~~the Contractor is ~~not~~ required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

3.2.3.1 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his 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 his position. Any necessary changes, including substitution of

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materials, shall be accomplished by appropriate Modification. 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, or 3.2.3.1, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2, ~~or~~ 3.2.3, or 3.2.3.1, 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. Contractor shall take field measurements, verify field conditions, and shall carefully compare them to the Construction Documents. ~~If t~~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 when the Contractor recognized or should have recognized such error, inconsistency, omissions or difference, and failed to report it to the Architect. Contractor shall not be entitled to additional compensation or additional Work caused by Contractor's failure to carefully study and compare the Construction Documents prior to the execution of the Work.

3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including the 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 any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. 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, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular campuses involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any 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 The Owner shall be entitled to deduct from the Contract Sum, amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where 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. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents, and this causes Architect or his Consultants to expend an unreasonable amount of 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 additional services made necessary by such failure.

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 Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall be evaluated 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

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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. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects, in writing, to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

Contractor shall attend weekly, or as otherwise directed by Owner, job site progress meetings. Program Manager shall conduct such meetings; and, shall manage Architect's recording, transcribing and distributing minutes to attendees, Architect, and other appropriate parties

§ 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. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the agent, servant or employee of the Owner, or (2) to create any partnership, joint venture, or other association between the Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to 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 described herein. As part of that responsibility, 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 controlled substances, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. 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 and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. 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 contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance. 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 and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal of the offending employee from 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 substantial breach of the Contract justifying the immediate termination by Owner pursuant to Article 14. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractor, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense. Contractor shall follow, and shall require all employees, agents, or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work. 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 connecting or adjacent to property of Owner.

§ 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. Contractor shall execute the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, using qualified, careful and efficient workers and in conformity with the provisions of the Contract Documents.

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3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling, and routing of all Work performed by all sub-contractors and sub-subcontractors.

3.3.5 To the extent that any portion of the Work requires a trench excavation exceeding five (5') feet in depth, in accordance with Texas Health and Safety Code § 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
.2 The special shoring requirements, if any, of the Owner;
.3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system; and
.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring use.

3.3.6 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 litigation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Paragraph 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 Occupations Safety and Health Administration.

3.3.7 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Contract or inferable from this Contract 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 or any of its authorized representatives in respect of the Work, shall relate to the result the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status. Pursuant to Texas Labor Code § 214.008, the Contractor and any subcontractor on the Project, shall properly classify, as an employee or an independent contractor, in accordance with Texas Labor Code Chapter 201, any individual the Contractor or subcontractor directly retains and compensates for services performed in connection with this Contract. Any Contractor or subcontractor who fails to properly classify such an individual, may be subject to penalties of Texas Labor Code § 214.008(c).

§ 3.4 Labor and Materials

§ 3.4.1 These 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. Texas Government Code § 2269.054. These Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project. Texas Government Code § 2269.0541. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code § 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for 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. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

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§ 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 Program Manager ~~and~~ in accordance with a Change Order or Construction Change Directive.

3.4.2.1 After evaluation by the Architect, substitutions and alternates may be rejected by the Architect or Program Manager 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 Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

3.4.2.2 The Contractor must submit to the Architect: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution: (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitution shall be submitted in writing to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

3.4.2.3 Whether or not 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 substitution.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at the Owner's request. Contractor shall place similar language in its subcontract agreements, requiring the 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.

3.4.4 Including, but not limited to, the specific requirement of Article 10, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state, and local laws, regulations, guidelines, and ordinances pertaining to work safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct.

3.4.5 Pursuant to Texas Education Code § 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 notice must include a general description of the conduct resulting in the conviction of a felony. The Owner may terminate this 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.

3.4.6 CRIMINAL HISTORY CHECKS

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3.4.6.1 So that Owner can obtain the national criminal history record information required by Texas Education Code Section 22.08341 on all "covered employees" (as defined in Section 3.4.6.3) of Contractor, its subcontractors, or any subcontracting entities who will perform the Work, Contractor shall submit to Owner the name and all necessary identifying information necessary to enable Owner to obtain the national criminal history information on those covered employees before they begin the Work. Contractor's submission will include the employee's written authorization for Owner to obtain such criminal history information. Owner may, in its sole discretion, prohibit the use of any employee to perform the Work after its review of the criminal history information, but cannot disclose the criminal history information to Contractor. Contractor shall reimburse Owner for Owner's costs incurred in obtaining the criminal history information. Contractor's violation of this section shall constitute a substantial failure under Article 14.

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

3.4.6.3 For the purposes of this Section, "covered employees" means employees, agents, or applicants of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code § 21.060, and 19 Texas Administrative Code § 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.7 OWNER'S ADDITIONAL REQUIREMENTS RELATED TO CRIMINAL HISTORIES

In addition, as provided in Section 3.4.6.1 above, Owner or Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or applicant of the Contractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

3.4.7.1 If the Contractor is the person or owner or operator of the business entity, that individual may not self-certify regarding the criminal history record information and its review, and must submit original evidence acceptable to the Owner with this ~~Agreement~~Contract showing compliance

3.4.8 PREVAILING WAGE RATES

3.4.8.1 Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the project is located as detailed in the "Minimum Wage Schedule" attached to this Contract. Wages listed are minimum rates only. However, 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 rate provided herein. Texas Government Code § 2258.001 *et seq.*

3.4.8.2 Contractor shall forfeit, as a penalty to the Owner, $60 for each laborer, worker, or mechanic, employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents.

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

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

3.4.8.5 If no schedule is attached to the Contract, Contractor shall use the wage rates contained in the Project Manual for the Project. If no wage rates are in the Project Manual, then the parties shall use the wage rate determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. § 276a, (which can be accessed on the internet at https://www.wdol.gov/or https://beta.sam.gov/) effective as of the date of this Contract.

§ 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~~ and that the Work will conform to the requirements of the Contract Documents.~~permit~~. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of 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. 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. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy of the damaged or defective portion of the Project. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. 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 within the Project, and each such individual warranty shall run from the applicable Work's Final Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular Work.) Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this Subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

§ 3.5.2 ~~All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4~~Contractor shall certify that the ~~Project~~Work 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 fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code § 61.1040~~36~~.

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3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. 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. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten (10) days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

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

3.5.4 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.

3.5.5 The Contractor agrees to issue the warranty (or warranties) in the name of the Owner, or assign the warranty (or warranties) to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, for any and all material, equipment, fixtures, and furniture (if supplied or installed by Contractor or its subcontractor), or other special warranties, and manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all manufacturer's warranties. All forms will be required to be submitted prior to Final Payment.

3.5.6 The warranties of Contractor provided in Section 3.5 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty under Section 12.2 herein on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the warranty period under Section 12.2 herein, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible from correcting any warranty items which are observed or reported during the warranty period under Section 12.2 herein. Contractor shall prosecute such warranty work under Section 12.2 herein without interruption until accepted by Owner and Architect, even though such work shall extend beyond the warranty period under Section 12.2 herein. If Contractor fails to provide the schedules to Owner and Architect, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

3.5.8 Prior to receipt of Final Payment, Contractor shall:

.1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;

.2 Verify that the documents are in proper form and contain full information;

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.3 Co-sign warranties when required;

.4 Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;

.5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project, name, address, and telephone number of Contactor, and name of its responsible principal;

.6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;

.7 Separate each warranty with index tab sheets keyed to the Table of Contents listing; and

.8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner.

3.5.8.1 Contractor and Owner acknowledge that the Project may involve construction work on more than one school building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of substantial completion, dates upon which the one-year warranty on each phase or building, which is substantially complete, will expire, and dates of final completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one (1) year warranty period on each building or each phase of the building that has been substantially completed. If Owner, Architect or Program Manager discovers during the warranty period, deficiencies not previously reported, Contractor shall accompany the Owner, Architect and Program Manager on an inspection of such deficiencies and Contractor shall be responsible for correcting any such deficiencies not caused by the Owner or the use of the building. 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 fifteen (15 days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one month prior to the expiration date, Contractor's warranty obligation described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected Contractor shall certify that the Work has been constructed in accordance with the Contract Documents. Any work performed by the Contractor that is not in accordance with the Contract Documents is defective and a breach of this agreement unless the Owner has agreed in writing to waive the defect. The Contractor shall provide all reasonable assistance in achieving compliance with building code specifications, accessibility standards, and Texas Education Agency Commissioner's rules in the Work.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. 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 Texas Tax Code § 151.309; § 151.310; § 151.311, and 34 TAC § 3.291 and § 3.287. For the purpose of establishing exemptions, 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, pursuant to Texas Tax Code § 151.054(e), § 151.155, and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154; 34 TAC § 3.285. Failure of Contractor or any Sub-Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax without compensation from Owner. Contractor shall pay all necessary local, county, and state taxes, income tax, compensation tax, social security, and withholding payments, as required by law. 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 TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

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3.6.2 ~~1~~ The Dallas Independent School District is an exempt organization as defined by the Limited Sales and Excise Use Tax Act of Texas. The Contractor may issue an exemption certificate in lieu of sales tax on the purchase, rental or lease of all materials, supplies, equipment used or consumed and other tangible personal property incorporated into the property being improved by virtue of this Contract, as well as all materials, supplies, equipment and other tangible personal property used or consumed by the Contractor in performing this Contract with the Dallas Independent School District. The Contractor may issue exemption certificate(s) to its suppliers in lieu of said sales tax for all of said materials and supplies. The uses of said materials and supplies for which an exemption from the said sales tax is claimed and any such exemption certificate(s), shall comply with the applicable rulings of the State Comptroller.

3.6.3 ~~2~~ The Contractor shall be held to have studied all tax laws for the State of Texas, the County of Dallas, Texas and the City of Dallas, Texas, and shall pay all taxes for which he may be liable as a consumer or user of goods, or otherwise without addition to the contract price. The Contractor shall pay all sales, consumer, use and other similar taxes required by law.

3.6.4 ~~3~~ Title to all goods or materials purchased under a~~s~~ resale certificate shall vest in the District at the time of initial possession by the Program Manager and shall be used only in performance of Services under this ~~Agreement~~Contract. Program Manager shall cause such items to promptly be marked, labeled or otherwise physically identified as the District's property. Program Manager shall cause items purchased under a resale certificate to send the receiving ticket to the District to be added to inventory before use by the Program Manager. Any tangible personal property purchased under a resale certificate as described above not fully used up in the Services shall remain with the District

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 ~~Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded~~After Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, Architect shall notify Contractor that Contractor may make and submit the applications for the building permit. The ~~Owner~~Contractor shall pay the municipality directly for the building permit and all other development "impact" fees, if any. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses and inspections necessary for proper execution of the Contract and which are legally required when bids or proposals are received. Such fees and expenses shall only be reimbursable to Contractor if expressly agreed to herein.

Architect shall assist Contractor in obtaining an Occupancy Permit by accompanying governing officials during inspections, including the architectural barrier inspection and correction, of the Project, if requested to do so by the Program Manager or the Owner. Architect shall assist the Contractor in obtaining the Certificate of Occupancy prior to the issuance of the Certificate of Substantial Completion.

3.7.1.1 The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar connection charges.

3.7.1.2 The Contractor shall pay directly all temporary utility charges, tap charges, and water meter charges, without reimbursement from Owner. After consultation with the Owner, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. 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'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 sites. 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, the Project, or the Owner.

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§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any notices required of Owner pursuant to Texas Business and Commerce Code, Section 116.0001, or 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~~ing~~ 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 appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 [*Intentionally deleted*] ~~Concealed or Unknown Conditions~~

~~If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than three 14(3) business days 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, report findings and a recommended resolution in writing to Owner and Contractor. If Owner's Board of Trustees and Contractor cannot agree on an equitable adjustment to the Contract Sum or Contract Time, then either party may pursue alternative dispute resolution as provided for in Article 15, within ninety (90) days of the Architect's recommendation. If such conditions will cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Architect will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.5 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.

3.7.6 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 inform the Architect and Program ~~at~~Manager at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, the payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

3.7.6.1 The Owner shall pay directly to the relevant jurisdiction those fees presently called "Storm Water Disposal Fees" to the water and sewage departments. Contractor shall ascertain amounts and advise Architect. Water meter charges shall be paid by the Contractor

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§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, unless required to do so by the terms of the Construction Documents.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site ~~and all required taxes~~, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, bonds, insurance, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum or the Owner's Contingency, at Owner's discretion, unless required to do so by the terms of the Construction Documents, shall be adjusted accordingly ~~by Change Order~~. The amount of the adjustment~~Change Order~~ shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness~~ , to avoid delay in the Work, provided that if a decision is needed to avoid delay, Contractor shall notify Architect and Program Manager in writing sufficiently in advance of needed date to allow reasonable time for selections to be made

3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the District.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communication 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, 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. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractor, Sub-Subcontractor, and their employees.

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 ~~The~~ Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain~~ed~~ assigned to this Work and present on the site during performance of 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 30 days of Substantial Completion~~not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed~~.

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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 for 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, shall prepare for and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

3.10.1.2 In the event that the Contractor is entitled to an extension of the Substantial Completion Date or any required interim completion date under the Contract Documents, Owner shall be entitled to direct the acceleration or re-sequencing of the Work in order to achieve the prior scheduled Substantial Completion Date or interim completion dates, and Contractor shall be reimbursed for the amount of the premium portion of overtime actually incurred in respect thereto and shall be entitled to an increase adjustment to the Contract Sum to the extent of the premium portion of overtime so incurred. Before proceeding with any such Owner-directed acceleration plan under this subparagraph, the Contractor shall have received the Owner's prior written approval of the plan and its anticipated not-to-exceed cost.

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

§ 3.10.3 The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to the Owner and Architect.

3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Program Manager shall conduct such meetings; and, shall manage Architect's recording, transcribing and distributing minutes to attendees, Architect, and other appropriate parties. Progress of the Work shall be reported at said meeting with reference to Contractor's construction schedule. The Contractor shall submit to the Architect, with each monthly application for payment, a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work, and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor 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 Substantial Completion Date or the Final Completion Date.

3.10.5 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non-Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by

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Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work, which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold resulting additional time and costs to a minimum. The construction schedule shall be in a detailed format satisfactory to the Owner, the Architect and Program Manager. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner, Program Manager and Architect and re-submitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as progress reports) as set forth in Subparagraph 3.10.1 or if requested by either the Owner or the Architect.

3.10.6 The Owner shall have the right to reschedule the time of day for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any rescheduling of performance of the Work under this Subparagraph 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Subparagraph 8.3.1, and an equitable adjustment in the Contract Sum, if: 1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, 2) such rescheduling is required for the convenience of the Owner and is not attributable to any act or omission of Contractor.

3.10.7 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 that calendar. These needs are reflected in any 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, the importance of meeting milestones and completion dates, and Contractor acknowledges and agrees that if these dates are not met, there may be a relaxation in the needed delivery dates because of the school calendar. When it appears to Owner or Contractor that a Contract milestone or completion date cannot be met for reasons not the fault of the Contractor, Contractor will develop with the Owner, Program Manager and Architect a plan and a budget under the Change Order provision of the Contract Documents to meet such a situation either (at Owner's option) by accelerating the Work to overcome the delays, or suspending or otherwise slowing the Work to efficiently take advantage of any relaxation in Owner's need for the completed Work.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain and make available, at all times, at the Project site, the Construction~~act~~ Documents, including Change Orders, Construction Change Directives, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner at all times, and delivered to the Architect for completion of record drawings.

3.11.2 In addition to any other requirement in the Contract Documents and prior to installation, Contractor shall furnish or cause a 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.

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents~~, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule~~, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By approving and 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. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. ~~The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents.~~ The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, completeness, 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. A registered architect must prepare

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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 paragraph, 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 by 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 form as required of the Architect to this Project.

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

3.12.11 The Contractor shall submit complete drawings, data, and samples to the Architect at least fifteen (15) days prior to the date the Contractor needs the reviewed submittals and samples returned. 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 within sixty (60) days of the date of the approval of the Contract Sum, if the Project is an A101 project; or Guaranteed Maximum Price, if the Project is an A133 project. Once samples of all key items are received, the Architect will finalize color selections.

3.12.12 The Contractor shall submit the number of copies of product data and samples which the Contractor and subcontractors need for their use, plus two (2) additional sets for the Architect, one (1) additional set for the Owner, and one (1) additional set for each of the Architect's consultants involved with the particular section of Work. Where shop drawings are involved, the Contractor shall submit one (1) high quality reproducible transparency, and one (1) opaque print of the shop drawing for the Architect, plus one (1) additional opaque print for each of the Architect's consultants involved with the particular section of Work. The reproducible transparency will be marked by the Architect and/or his consultants. After final review and correction of the submittal, the Contractor shall send one corrected set to the Architect and each of the Architect's consultants involved with the particular section of the Work.

3.12.13 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.

3.1.2.14 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 engineer.

§ 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. When the Work is to be performed at an existing school location, Contractor shall schedule and perform the Work in a manner that does not compromise the safety to school students, faculty and staff, and does not unreasonably disrupt or interfere with the continuing normal routine of the school. If a School Operations Parameters Statement is a part of the Contract Documents, Contractor will comply with its terms, at no increase in price.

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 properly 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 its subcontractor shall not erect any sign on the Project site without the prior written consent of the Owner.

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3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that the public area 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 Construction Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy.

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

§ 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 Construction Documents and 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. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. 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. 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. 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. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition.

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

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.

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3.15.4 After construction is complete, 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 carpet 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 system if units are 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, Program Manager and Architect and their designated representatives with access to the Work in preparation and progress wherever located. The presence of the Owner, Program Manager or Architect at the Work site does not imply acceptance or approval 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. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS AND SHALL WAIVE AND RELEASE CLAIMS AGAINST THE OWNER, PROGRAM MANAGER AND ARCHITECT, AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT ~~HARMLESS~~ FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR ~~BUT~~ SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PREPARED BY THE ~~OWNER OR~~ ARCHITECT, AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS, OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or patent ~~is discovered by, or made known to, the Contractor,~~ the Contractor shall be responsible for ~~the~~such loss unless such~~the~~ information 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 INDEMNIFY AND HOLD HARMLESS THE OWNER, ARCHITECT, ARCHITECT'S CONSULTANTS, OWNER'S TRUSTEES, CONSULTANTS, -PROGRAM MANAGER, AND OFFICERS, 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 WILLFUL OR NEGLIGENT 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 A PARTY BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. 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 TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS.

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3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER 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 EXPENSES THAT ARISE 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 THE OWNER MAY CAUSE ANY OTHER 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 OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

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

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

3.18.7 It is understood and agreed that Subparagraph 3.18.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

3.18.8 THE OWNER MAY CAUSE ANY OTHER 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 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, TO THE SAME EXTENT AS PROVIDED IN SUBPARAGRAPH 3.18.1 ABOVE.

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 and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

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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~~Contract.

§ 4.1.2 Owner shall notify Contractor when the duties, responsibilities or limitation 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 Construction Documents and the Contract Documents by the duties, responsibilities, or activities of the Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 Certain portions of the administration of the Contract will be performed by the Architect, others by the Program Manager. Both the Architect and the Program Manager will be treated as the Owner's representatives to the extent set out in the Contract Documents. Neither the Architect nor the Program Manager shall have the authority to act on behalf of ~~the Owner only to the extent provided in the Contract Documents.~~ Owner unless such authority is expressly granted in the Contract Documents, nor shall such authority be implied from any act or representation of the Architect or Program Manager. ~~The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final~~ This period shall extend until 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 12.2.2~~Certificate for Payment~~. ~~The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, or as they may be amended in the future.~~

§ 4.2.2 The Architect, as a representative of the Owner, ~~will~~shall visit the site at least twice per week (or more per week when deemed necessary by the Owner's Superintendent or when necessary to protect Owner's interests) and at any other intervals appropriate to the stage of construction, to inspect ~~or as otherwise agreed with the Owner, to become generally familiar with~~ the progress, ~~and~~ quantity and quality of the ~~portion of the~~ Work completed, to reject any observed nonconforming Work, and to determine ~~in general~~ if the Work ~~observed~~ is being performed in a manner indicating that the Work, when ~~fully~~ completed, will be in accordance with the Construction Documents and 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 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 structural consultant will provide on-site observation 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 structural consultant will provide on-site observation 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 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 the 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 action taken or recommended. ~~However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.~~ The Architect, however, ~~will~~shall not have control over~~, charge of~~, or responsibility for the Contractor's construction means, methods, techniques, sequences, ~~or~~ procedures, or ~~for the~~ safety ~~precautions and~~ programs, but this does not relieve Architect of Architect's responsibilities under this Contract. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work, shall be performed at no additional cost to Owner ~~in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents~~.

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

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failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The 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, T~~the Owner and Contractor shall ~~endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. However, Owner reserves the right to communicate directly with Contractor and Subcontractors include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project.~~ Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. ~~The Contract Documents may specify other communication protocols.~~

§ 4.2.5 As further provided in the Contract Documents, ~~B~~based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect ~~has authority to~~ shall reject Work that does not conform to the Construction Documents and the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will ~~have~~recommend to Owner additional ~~authority to require~~ inspection or testing of the Work in accordance with ~~Sections 13.4.2 and 13.4.3~~the provision of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. 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 nonconformance with Construction Documents or the Contract Documents they may respectively discover, 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. Testing or inspection required by this subparagraph shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 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 Construction Documents and the Contract Documents. The Architect's action will be taken ~~in accordance~~ with ~~the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with~~ reasonable promptness 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 not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation ~~or performance~~ of equipment or systems, ~~all of which~~ remain the responsibility of the Contractor as required by the Construction Documents and 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, unless otherwise specifically stated by the Architect, 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 Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report, in writing, to the Contractor, Program Manager and Owner any errors, inconsistencies, and omissions discovered by the Architect in the Shop Drawings, Product Data, and Samples.

§ 4.2.8 The Architect ~~will~~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 Construction Documents and the Contract Documents, accompanied by all supporting documentation. The Architect~~, and~~ may ~~order~~authorize minor changes in the Work not involving any adjustment in Contract Sum or Guaranteed Maximum

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Price, 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 Owner shall review properly prepared, timely requests by the Contractor for change in the Work, including adjustments to the Contract Sum or Guaranteed Maximum Price, 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 ~~will investigate and~~to make a reasonable determination~~s~~ 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 Construction Documents or the Contract Documents, and do not change the Contract Sum or Guaranteed Maximum Price, or Contact 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 system such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof, foundation; outward appearance, color scheme, floor plans, building materials; drainage or mechanical equipment with Owner's prior written consent ~~and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4~~.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; ~~issue Certificates of Substantial Completion pursuant to Section 9.8;~~ will 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 will issue a final Certificate for Payment ~~pursuant to Section 9.10~~upon compliance with the requirements of the Contract Documents.

§ 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~~ Architect have been ,modified.

§ 4.2.11 The Architect will interpret and ~~decide matters~~make recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.12 Interpretations ~~and decisions~~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 ~~decisions~~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 ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect ~~wi~~shall be final ~~if consistent with the intent expressed in the Contract Documents~~.

§ 4.2.14 The Architect will review and respond to requests for information about the Construction Documents and the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information, at no additional 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. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

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Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner, ~~and~~ Architect and Program Manager, in writing, 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 ~~ma~~or ~~ys~~Program Manager shall notify, in writing, 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 Owner or Architect to provide notice ~~within the 14-day period~~promptly 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. 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, 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, Program Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Program Manager 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~~If~~ the parties agree on a proposed substitute ~~but rejected~~ Subcontractor ~~was reasonably capable of performing the Work~~, then the Contract Sum and Contract Time ~~sh~~may~~ll~~ 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.

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

5.2.5 Each Contractor or Subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections, or inquiries prior to submission of a bid or proposal. No increases in Contract Sums or Guaranteed Maximum Price shall be allowed for failure to so inspect or investigate.

The Contractor shall disclose to the Owner any ownership interest or affiliation between the Contractor and any potential subcontractor prior to entering into a subcontract and the Owner shall have the right, in its sole discretion and pursuant to 5.2.3., to reject any such affiliated subcontractor. Further, Contractor shall not subcontract the work as a whole.

The approval of Subcontractors in no way relieves the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its Subcontractors, including those recommended or approved by the Owner

5.2.6 The Contractor agrees to utilize Subcontractors that are historically underutilized businesses in accordance with the Minority and Women Owned Business Enterprise (M/WBE) forms and guidelines attached hereto as Exhibit "C".

No changes to the Plan may be made unless approved in writing by the Owner. The Contractor, prior to the execution of this Contract, shall report their M/WBE participation goal as a percent of the Contract Sum. During the performance of all Work under this ~~Agreement~~Contract, the Contractor and its agents shall comply with all M/WBE policies of the Owner. The information shall be identified per firm, discipline and participation. While this ~~Agreement~~Contract is in effect and until the expiration of one year after final completion, the Owner may require information from the Contractor, and may conduct audits, to assure that the Plan is being, and was, followed,. With each Contractor's application for payment, the Contractor shall report their updated M/WBE Plan and actual M/WBE participation information.

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5.2.7 Contractor shall promptly notify the Owner, Architect and Program Manager of any material defaults by any subcontractor

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included 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. , 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 shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the 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 due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

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 by the Owner for cause pursuant to SectionArticle 14.2 or abandonment of the Project by the Contractor; and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and

.3 The Subcontractor provides bonds as required by law of prime contractors and by Owner.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon sSuch assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner shall only be assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally 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.all of the successor contractor's obligations under the subcontract.

5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor after written notice for undisputed amounts not previously paid to Contractor subsequent to the Owner's exercise of any rights under this conditional assignment.

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5.4.5 Contractor shall be fully responsible for the performance of its Subcontractors, including those selected or approved by the Owner

5.5 NOTICE OF SUBCONTRACTOR DEFAULT

Contractor shall promptly notify Owner and Architect 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 under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. The Owner 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. Owner shall have access to the building on the site at all times.

§ 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~~Contract.

§ 6.1.3 The ~~Owner~~ Contractor shall ~~provide for~~ coordinat~~eion of~~ the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor to ensure that the Work remains on schedule~~, 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 between the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 It shall be the responsibility of the Contractor to assist, review, coordinate, and schedule work performed by any of Owner's separate contractors including the hazardous materials abatement contractor. Contractor shall not be required to contract directly with the hazardous materials abatement contractor or Owner's separate contractor's however, Contractor shall coordinate all aspects of the hazardous materials abatement contractor's and Owner's separate contractor's work, including required monitoring, testing and inspections by independent firms, with the Work under this ~~Agreement~~Contract. The Contractor shall be totally responsible for coordination between its Subcontractors and the hazardous materials abatement contractor and any other Owner's separate contractors. Contractor will cooperate with the Owner to allow site access and staging areas for hazardous materials abatement contractor and Owner's separate contractors and consultants. Contractor shall review Owner's contract with the hazardous materials abatement contractor and Owner's separate contractors and become familiar with the requirements and scope of services contained therein. Contractor shall continually review the work performed by the hazardous materials abatement contractor and Owner's separate contractors and immediately notify the Owner and Program Manager if at any time during the performance of Contractor's work, the hazardous materials abatement contractor or any of Owner's separate contractors fail, in any way, to provide sufficient, competent manpower or timely perform its services. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of the hazardous materials abatement contractor and any of Owner's separate contractors ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~

§ 6.2 ~~Mutual~~Contractor's 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 including the hazardous materials abatement contractor.

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Contractor shall not be required to contract directly with the hazardous materials abatement contractor or Owner's separate contractor's however, Contractor shall coordinate all aspects of the hazardous materials abatement contractor's and Owner's separate contractor's work, including required monitoring, testing and inspections by independent firms, with the Work under this ~~Agreement~~Contract. The Contractor shall be totally responsible for coordination between its Subcontractors and the hazardous materials abatement contractor and any other Owner's separate contractors. Contractor will cooperate with the Owner to allow site access and staging areas for hazardous materials abatement contractor and Owner's separate contractors and consultants. Contractor shall review Owner's contract with the hazardous materials abatement contractor and Owner's separate contractors and become familiar with the requirements and scope of services contained therein. Contractor shall continually review the work performed by the hazardous materials abatement contractor and Owner's separate contractors and immediately notify the Owner and Program Manager if at any time during the performance of Contractor's work, the hazardous materials abatement contractor or any of Owner's separate contractors fail, in any way, to provide sufficient, competent manpower or timely perform its services 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 opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's 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, in writing, the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work, and shall promptly report, in writing, to the Architect and Owner if Owner's Separate Contractors 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, in writing, 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, and is performed in a timely manner, to receive the Contractor's Work. The Contractor shall not be responsible for latent discrepancies or defects in the construction or operations by the Owner or Separate Contractor ~~that are not 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 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 or Program Manager is required to provide additional services, as provided in the Contract between the Owner or Program Manager ~~-~~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 Owner's Contract with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the additional services result from negligence of or an omission by the Architect and Program Manager.~~-~~

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 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 details, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by~~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.

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

§ 6.3 Owner's Right to Clean Up

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

6.3.1 Job site cleanup will be performed on a daily basis. The Owner and/or Program Manager will periodically check the site to see that all construction areas, nearby roads, walkways and/or grounds are maintained in a clean and safe manner. The cost to clean up the site will be assessed to the Contractor each time the Owner is required to clean the area due to failure of the Contractor or his designee to satisfactorily perform or enforce this site clean-up requirements. The Owner will assess the cost. Before assessing the cost, the Contractor shall be given notice of the failure to clean the site and one business day after the date of the notice to clean up the site. If the Contractor fails to clean up the site, after notice, the Owner may assess the cost for cleanup.

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, Contingency Authorization or order for a minor change in the Work~~,~~. 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. The Contract Sum and/or Contract Time may be increased for changes in the Work if the provisions of Article 7 have been met.

Architect shall review properly prepared, timely requests by Contractor for a proposed change in the Work, including but not limited to adjustments to the Contract Sum or Contract Time. A properly prepared request for a proposed change shall be accompanied by sufficient supporting data and information to permit Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications

§ 7.1.1.1 No changes in the Contract Sum and/or Contract Time will be allowed for a change in the Work unless prior to performing the changed Work the Contractor has provided the Owner in writing with a proposal for any change in price and/or change in Contract Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within ten (10) days of receiving the directive, submit a change proposal to the Owner, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 15

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone. A change in the work that does not require a change in Contract Sum or Contract Time may be paid from the Contingency Allowance. A Contingency Allowance Expenditure Authorization (CAEA) is a written order prepared by the Architect and signed by the Owner, Contractor and Program Manager directing a change in the Work. A CAEA shall not be used for minor changes in the Work. Note: If the Construction Manager Percentage Fee was not previously included in the approved GMP, the approved additions or deductions for authorized amounts for Contingency Expenditures will also include an appropriate adjustment for the Construction Manager Fee at the percentage approved in Article 5.1.1 and 5.1.2 of the modified AIA Document A133.

7.1.2.1 Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the Work or supply additional labor, services, or materials beyond that actually required by the terms of the Contract Documents, unless made pursuant to a written order from Owner authorizing Contractor to proceed with the change. No claim for an adjustment of the contract price will be valid unless so ordered.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Construction Documents or 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. Except as permitted in

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Paragraph 7.3 or 15, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. -Contractor shall not make any claim for an adjustment to time, Contract Sum, or Guaranteed Maximum Price 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 Construction Documents or 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 time, Contract Sum, or Guaranteed Maximum Price shall be valid unless so ordered or directed.

7.1.4 The total Contractor mark-up for overhead, profit, or fee for work performed by the Contractor's own forces shall not exceed 10% of the cost of the change in the Work. The total Contractor mark-up for overhead, profit, or fee for supervision of work performed by subcontractors' forces shall not exceed 4% of the cost of the change in the Work. The total subcontractor mark-up for overhead, profit, or fee for work performed by the subcontractor's forces shall not exceed 10% of the cost of the change in the Work. In no event shall total mark-up for overhead, profit, or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the Work, exceed 14% of the total cost of the change in the Work.

7.1.5 The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the Architect.

.1 Each separate Change Proposal shall be numbered consecutively and shall include materials, costs, labor costs, fees, overhead and profit. The Proposal shall specify all 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 Program Manager;

.4 A revised Change Proposal shall bear 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 the Owner, the Architect and the Program Manager; the Architect will prepare a 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 time extension

7.1.5.1 The combined overhead and profit included in the total cost to the Owner of a change in the Work shall be based on the following schedule:

.1 For approved additions or deductions to the Cost of the Work (not including preconstruction or general condition costs), the Construction Manager's Fee will be increased or decreased at the same percentage approved in Section 5.1.1 and 5.1.2 in the approved A133 contract document.

.2 For approved additions or deductions to any of the Construction Manager's subcontracts for self-performed work paid in accordance with the Section 2.3.2.2 of the A133 contract document, the self-performed work fee will be the same as approved in Section 2.3.2.2 of the A133 contract document.

.3 For approved additions or deductions to approved Subcontracts, the maximum markup on changed Work performed by the Subcontractor's own forces will be ten (10%) percent of the approved allowable Change Order costs.

.4 For approved additions or deductions to approved Subcontracts, the maximum markup on changes for Work performed by the Subcontractor's Sub-subcontractors will be four (4%) percent of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.7

.6 In order to facilitate checking of quotations for extras or credits, all proposals except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also.

7.1.6 ~~5~~ Allowance balances may be used to fund changes in the Work. The Contractor will not be allowed an

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overhead, profit, or fee mark-up when changes in the Work are funded by one of the Allowances. The combined overhead and profit included in the total cost to the Owner of a change in the Work shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten (10%) percent of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractor's, four (4%) percent of the amount due the subcontractors.

.3 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, ten (10%) percent of the cost.

.4 For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, four (4%) percent of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.76.

.6 In order to facilitate checking of quotations for extras or credits, all proposals except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also

7.1.7 ~~6~~ 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. Texas Education Code § 44.0411.

§ 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 or Guaranteed Maximum Price; and

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

7.2.2 Methods used in determining adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Sufficient substantiating data shall include a proposal itemized for the various components of work added or deleted, segregated by labor, material and equipment. Details to be submitted will include detailed line item estimates showing detailed material quality takeoffs, material prices by item, and of related labor hour pricing information and extension by line item by drawings as applicable);

.2 Unit prices stated in the Contract Documents or subsequently agreed upon and supported by sufficient substantiating data to permit evaluation;

.3 Cost to be determined in a manner agreed upon by the parties and a mutually-acceptable fixed or percentage fee or the percentage fee established at 7.1.5; or;

.4 As provided in Subparagraph 7.3.7.

7.2.3 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

7.2.4 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 the Guaranteed Maximum Price, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

7.2.5 Agreement on any Change Order shall constitute a final settlement of all claims by the Contractor directly or indirectly arising out of or relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time

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§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Guaranteed Maximum Price, 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 or Guaranteed Maximum Price, 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 The Construction Change Directive shall include a unilateral change in the Contract Sum and/or Contract Time reflecting the Owner's reasonable view of the appropriate change in the Contract Sum and/or Contract Time for the change in the work covered by the Construction Change Directive. Until agreement is reached by the Owner and Contractor on these issues, the change in Contract Sum and Contract Time set out in the Construction Change Directive shall be used for schedule of values, payment, and scheduling purposes.

~~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; Sufficient substantiating data shall include a proposal itemized for the various components of work added or deleted, segregated by labor, material and equipment. Details to be submitted will include detailed line item estimates showing detailed material quality takeoffs, material prices by item and of related labor hour pricing information and extension (by line item by drawings as applicable.~~

~~.2 Unit prices stated in the Contract Documents or subsequently agreed upon; and supported by sufficient substantiating data to permit evaluation.~~

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

~~.4 As provided in Section 7.3.4.~~

§ 7.3.4 [*Not used*] ~~If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:~~

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

~~.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;~~

~~.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~

~~.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and~~

~~.5 Costs of supervision and field office personnel directly attributable to the change.~~

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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 Guaranteed Maximum Price, or Contract Time.

§ 7.3.7 In the absence of agreement between Owner and Contractor on the proper change to the Contract Sum or Contract Time because of a change in the Work, Contractor may treat the matter as a Claim under Paragraph 15. In

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such event, the Contractor shall be entitled to recover only the amount by which its direct costs have been reasonably increased over the direct cost of performing the Work without the change in the work, plus three percent (3%) on Subcontractor's Work) of direct cost to cover home office overhead, profit, and all other costs. Direct costs shall be limited to the following:

~~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.~~

.1 Reasonable Cost of Labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Materials, supplies and equipment, equipment including cost of transportation, whether incorporated or consumed;

.3 Rental cost 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 normal local rental rates for contractor-owned equipment;

.4 Premiums for all bonds and insurance permit fees and sales, use or similar taxes related to the Work; and

.5 Cost of Subcontractor for performing the change in the Work. The amount allowable for Subcontractors shall be calculated using the same standards set out herein for direct Work by the Contractor.

.6 Additional cost of supervision and field office personnel directly attributable to the change.

Contractor and each Subcontractor involved shall furnish evidence of costs such as copies of original invoices for materials, payroll vouchers for labor, etc., upon request by the Architect, Owner, or Program Manager. Any increase in Contract Time shall be limited to the amount of time by which activities critical to overall completion of the Project are delayed by the change in the Work. If it is reasonably possible to perform the change in the Work concurrently with Work that is critical to overall completion, no time extension shall be granted by reason of a change in the Work.

§ 7.3.8 [*Not Used*] ~~The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that which~~ results in a net decrease in the Contract Sum ~~shall be actual net~~ cost of the work deleted, ~~including all profit and overhead, plus the Contractor's allocated percentage of three (3%) percent on Subcontractor's work of direct cost to cover supervision, field office and home office overhead, profit and all other costs~~ cost 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 [Not Used] ~~Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

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

§ 7.4 Minor Changes in the Work

With prior written notice to the Owner's representative, ~~T~~the Architect may order minor changes in the Work that are consistent with the ~~intent of the~~ Construction Documents or the Contract Documents and do not involve an adjustment in the Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time, nor requiring any payment from the Contingency Allowance. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Guaranteed Maximum Price, or Contract Time, or requiring a payment from the Contingency Allowance, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect

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the Contract Sum or Guaranteed Maximum Price, or Contract Time, or the Contingency Allowance, the Contractor waives any adjustment to the Contract Sum or Guaranteed Maximum Price, or extension of the Contract Time or the Contingency Allowance. 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 ~~Substant~~Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the ~~date established in the Agreement~~ first business day after Contractor's receipt of the written Notice to Proceed. The Notice to Proceed shall not be issued by Architect until the Contract (or Amendment, if Contractor is a Construction Manager at Risk) has been signed by the Contractor, approved by Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance, in compliance with Article 11. Issuance of the Notice to Proceed shall not relieve the Contractor of its responsibility to comply with Article 11.

8.1.2.1 If the Notice to Proceed is delayed due to delays in issuance of the building permit by municipal authorities or other unanticipated delays, *and* if building materials are expected to increase in price due to that delay, Contractor may, if Owner expressly agrees in writing, purchase such materials before receiving the Notice to Proceed from Owner. Contractor shall store and insure such building materials until use. In the event the project is cancelled, Contractor's contract is terminated, or the materials are not used (in whole or in part) on the Project, Contractor shall sell the unused materials to Owner at Contractor's actual cost, or reduce its billing to Owner in that amount, if Contractor retains the material.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion.

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

§ 8.2 Progress and Completion

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

If Contractor fails to achieve Substantial Completion of the Work on or before the date(s) specified for Substantial Completion in this Contract and the other Contract Documents, Contractor shall pay to the Owner, as liquidated damages, the sum set out in the Contract between Owner and Contractor for each calendar day that Substantial Completion is delayed after the date(s) specified for Substantial Completion. The total liquidated damage claim is determined by multiplying daily-liquidated damage amounts stated in the Contract by the number of days late. A fraction of a day shall be counted as a full day. It is hereby agreed that the actual damages which Owner will suffer by reason of late completion would be difficult to ascertain, and the liquidated damages to which Owner is entitled hereunder are a reasonable forecast of just compensation for the harm that would be caused by Contractor's failure to achieve Substantial Completion of the Work on or before the date(s) specified for Substantial Completion, and not a penalty. Liquidated damages shall be paid as they accrue and may be adjusted from any progress payment due.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, ~~,~~ prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a Notice to Proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five (5) days or other agreed period.

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

8.2.4 The Contractor is subject to liquidated damages, as specified in the Contract, if the Work is not completed by the date of Substantial Completion 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 in performing work that is critical to overall completion of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of or Program Manager, or a Separate Contractor; (2) by changes ordered in the Work; (3) by ~~labor disputes,~~ fire, governmental actions~~unusual delay in deliveries~~, ~~unavoidable casualties,~~ or adverse weather conditions documented in accordance with Section 15.1.6.2~~, or other causes beyond the Contractor's control~~; (4) by delay authorized, in writing, by the Owner ~~pending mediation and binding dispute resolution~~; or (5) by other causes that the Contractor asserts, and the Owner and Architect determine~~s~~, may justify delay, then the Contract Time ~~sh~~may~~ll~~ be extended for such reasonable time as the Owner, ~~and~~ Architect or Program Manager may determine. Adjustments in the Contract Time will be permitted for a delay only to the extent such delay is not caused or could not have reasonably been anticipated by the Contractor, and could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and only if Contractor satisfies the conditions of this Paragraph 8.3. Contractor has the burden to prove that any of the foregoing alleged causes of delay significantly impacted construction progress on the critical path, as a condition precedent to any extension of the Contract Time.

The Contractor shall anticipate and include in the construction schedule lost time due to adverse weather conditions in accordance with the number of Lost Time Workdays per month in the Dallas area in accordance with the following schedule:

January – 5
February – 4
March – 5
April – 6
May – 6
June – 4
July – 4
August – 4
September – 5
October – 4
November – 4
December – 4

A request for a time extension based on unusually adverse weather conditions will not be permitted unless the cumulative actual days of Lost Time Workdays for the period when the critical path of the project is subject to impact from Lost Time Workdays exceeds the cumulative number of expected Lost Time Workdays for the same period. The final calculation of entitlement to a time extension cannot be made until at least sixty (60) days prior to the agreed date for Substantial Completion of the Project ~~is completed~~ and the time extensions for unusually adverse weather may not be made until that time. However, Contractor will submit claimed Lost Time Workdays in accordance with the submission times provided in 8.3.2. No day on which substantial Contractor forces are able to perform the work on the Project for more than fifty percent (50%) of the usual workday will be counted as a Lost Time Workday. Lost Time Workdays will not be calculated for any period when the critical path of the project is not subject to impact from adverse weather conditions.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~ On or before the fifteenth (15th) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in the Work, which are to be submitted in accordance with the requirements of Article 7. If Contractor's request for time extension for Changes in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension by the fifteenth (15th) day of the month following the denial. Any claim for time extension not submitted under the terms of this Subparagraph shall be waived.

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8.3.2.1 Owner, after consultation with the Architect and Program Manager, shall grant time extensions to the extent it believes them to be proper. Time extensions granted by the Owner may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the Owner, it may make a claim for them provided it can meet the requirements of Paragraph 15.1.

§ 8.3.3 This Contract ~~Section 8.3~~ does not permit~~reclude~~ 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 or acts of God. Contractor agrees that the only possible compensation for any delay is an extension of time ~~by either party under other provisions of the Contract Documents~~.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the ~~Agreement~~Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. In the event that the Project is a Construction Management at Risk Project, the Contract Sum shall not exceed the Guaranteed Maximum Price.

§ 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 ~~sh~~may~~ll~~ be equitably adjusted by prior written agreement.

§ 9.2 Schedule of Values

9.2.1 Before the first Application for Payment, ~~,~~ the Contractor shall submit a schedule of values to the Architect and Program Manager before the first Application for Payment, allocating the entire Contract Sum or, in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect or Program Manager may require, and unless objected to by the Architect, 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 Document G702 and G703, Application and Certificate for Payment and Continuation Sheet. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702CMa and G703 shall be used.

9.2.2 ~~.~~If the Project is a Construction Manager at Risk project, in order to facilitate the review of Applicants for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

.1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, or general conditions, etc. shall be listed as individual line item.

.2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivide into footings, grade beams, floor slabs, or 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, or 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.

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.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 time specified in the Contract, the Contractor shall submit to the Architect and Program Manager an itemized Application for Payment for operations completed prepared in accordance with the schedule of values~~, if required under Section 9.2, for completed portions of the Work~~. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage ~~if provided for in the Contract Documents~~.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, but not yet included in Change Orders. Contractor agrees that, for purposes of Texas Government Code Sections 2251 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 shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code Sections 251.021 and 2251.042~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders~~.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor ~~doe~~has not ~~intend~~ been invoiced by~~to pay~~ a Subcontractor or supplier, unless ~~such~~Contractor has self-performed the Work ~~has been performed by others whom the Contractor intends to pay~~.

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 Section 9.4 or 9.5 as amended. The remaining retainage shall be paid with the Final Payment, unless there is a bona fide dispute between Owner and Contractor and the reason for the dispute is that labor, services, or materials provided by Contractor, or a person under Contractor's direction or control, failed to comply with the express terms of the Contract, or if the surety on any surety bond does not agree to the release of retainage. Written notice of the basis for withholding retainage under Texas Government Code Sections 2252.031 – 2252.032 must be provided to Contractor. If there is no bona fide dispute and neither party is in default, Contractor may cure any noncompliant labor, services, or materials, or offer Owner reasonable compensation for such noncompliant labor, services, or materials that cannot promptly be cured. Owner is not required to accept such offer.

§ 9.3.2 ~~Unless otherwise provided in the Contract Documents, p~~Payments ~~shaw~~ill be made on the basis of invoices for specific ~~account of~~ materials ~~and~~or equipment ~~delivered and suitably stored at the site for subsequent~~ incorporate~~d~~ion in the Work, and ~~. If approved in advance by the Owner, payment may similarly be made for~~ specific materials ~~and~~or equipment (1) suitably stored the site or (2) suitably stored at some off~~-the~~ site ~~at a~~ location, provided the following conditions are met for ~~agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored~~ off~~-the~~ site storage:

.1 The location must be agreed to, in writing, by 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 may be an Additional Service and shall compensate Architect directly for same upon request.
.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 documentation satisfactory to the Owner to establish the

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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 proof of delivery to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payment, deposits, or other advance payment for materials or equipment until the materials or equipment are delivered to Owner's site or the agreed-upon off-site storage. 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.

CONTRACTOR AGREES TO INDEMNIFY OWNER FROM ANY LOSS RESULTING FROM A BREACH OF THIS SECTION. Any off-site storage shall be in a bonded warehouse, suitably marked for the individual project, in addition to the requirements above

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Neither Contractor nor any of its materialmen, laborers, or Subcontractors shall have any lien rights against the Owner's lands, building funds, materials or other property. No materialmen, laborers or Subcontractor of the Contractor shall have any enforceable rights against the Owner of this Contract. Materialmen, laborers and Subcontractors of the Contractor may have rights under any Payment Bond provided by the Contractor, but cannot look to the Owner for any help in enforcement of those rights. CONTRACTOR SHALL WAIVE, RELEASE, INDEMNIFY, AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH, OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

9.3.4 Contractor shall submit Applications for Payment, in quadruplicate, using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMa, if applicable) and Continuation Sheet or electronically, if acceptable to Owner. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. 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 and supplies identified in the Applications for Payment have been purchased, paid for, and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that Contactor has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of the Applications for Payment; 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 Payment Application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' 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 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 Applications 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. Contractor further understands and agrees that falsification of documents may entitle Owner to restitution as permitted by Texas law and these Contract Documents.

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§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, carefully evaluate and review the Applications for Payment and, when appropriate, return the Applications for Payment to the Contractor as provided in Section 9.3.4. If the Applications for Payment are complete, then the Architect shall sign and either (1) certify and issue to the Owner a Certificate for Payment in the full amount of the Applications for Payment, with a copy to the Contractor; or (2) certify and issue to the Owner a Certificate for Payment for such amount as the Architect and Program Manager determines is properly due, and notify the Contractor and Owner in writing of the Architect's or Program Manager reasons for withholding certification and disputing in part certification as provided in Section 9.5.1; or (3) withhold certification of the entire Applications 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. Architect's written reason for withholding certification shall be submitted in accordance with, and construed as the notice required by Texas Government Code Section 2251.042 *et. seq.* Owner may not withhold from payments more than 110% of the disputed amount.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect or Program Manager to the Owner, ~~based on the Architect's evaluation of the Work and the data in the Application for Payment,~~ that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion, ~~to the best of the Architect's knowledge, information, and belief,~~ the Work has progressed to the point indicated, and the quality of the Work is in accordance with the Contract Documents. Further, the issuance of the Certificate for Payment will constitute a representation by the Architect or Program Manager to the Owner that the Architect or Program Manager has carefully evaluated and certified that the amounts requested in the Applications for Payment are valid and correct and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect or Program Manager in writing to the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect and Program Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from 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. 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.

9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 Decisions to Withhold Certification

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

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a Separate Contractor;

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.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~

.7 repeated failure to carry out the Work in accordance with the Contract Documents; or

.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.

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

§ 9.5.3 Architect's written reason for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq*~~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 the Contract Documents, ~~If~~ then Architect or Program Manager may withhold~~s~~ any further ~~c~~Certificate~~ion~~ for ~~p~~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~~ from Contractor to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. ~~failed to make payment for Work properly performed or material or equipment suitably delivered. If t~~The Owner shall not be deemed in default by reason of withholding ~~makes~~ payment~~s~~ as provided in Sections 9.3.4, 9.4.3, 9.5.1, or this Section ~~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, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within 21 days if Owner disputes the Architect's Certificate of Payment pursuant to Texas Government Code Section 2251.042 *et seq*, listing the specific reason for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ~~seven~~ ten days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payments promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then 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.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Program Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier~~, except as may otherwise be required by law~~. Any action taken by Owner to require the Contractor to pay a Subcontractor shall not impose any liability on Owner to the Subcontractor or supplier.

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

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

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision~~. Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor. Texas Property Code § 162.001.

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, t~~THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.

9.6.9 Contractor shall not withhold as 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 ~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or~~ Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect and Program Manager, which is undisputed, due and owing ~~within seven days~~ after the date the payment is due under the Contract Documents ~~established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution~~, then the Contractor ~~may~~, upon ~~s~~tenven (10) additional days' written notice to the Owner, Program Manager and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the amount owing has been received. ~~The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents~~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.~~[*Intentionally deleted*]

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9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then 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 Contractor, or if the Owner incurs any costs and 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, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor form the Owner, or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 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; all required governmental inspections and certifications required by the Work have been made, approved, and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's, or Owners' tenant normal school operations, or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work with respect thereto will be completed within the time specified by the Contract Documents for Final Completion. As provided in the Contract Documents, Owner may occupy a portion of the facility prior to Substantial Completion.

§ 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 Architect and Program Manager shall prepare ~~shall prepare~~ and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Program Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the 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, Program Manager 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than five (5) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will timely prepare, sign and issue Owner's ~~a~~ Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of ~~Substantial~~ Final Completion of the Work or designated portion ~~thereof unless otherwise provided in the Certificate of Substantial Completion~~.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

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9.8.6 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the Owner in writing, regardless of the stated date of Substantial Completion, subject to 11.2.2. Acceptance shall not be unreasonably withheld.

§ 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~~agreed to by the Owner and ~~the Contractor in writing, provided such occupancy or use is consented to by the insurer and~~ authorized by public authorities having jurisdiction over the ~~Project~~Work. 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 resulting from such occupancy, use or installation, and property and liability insurance, ~~and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2.~~ Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. 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, ~~or~~ 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~~ expressly 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 Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect and the Program Manager finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect and the Program Manager will promptly prepare, sign, and issue Owner's Certificate of Final Completion and a final Certificate for Payment ~~stating that to the best of the Architect's knowledge, information and belief,~~ certifying to the Owner that, ~~and~~ on the basis of the Architect's and the Program Manager's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance, including all retainages, found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's and the Program Manager 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. Final payment shall be made by the Owner in accordance with Owner's regular schedule for payments. Architect is not required to perform more than two inspections to determine whether a designated portion of the Work has attained Final Completion in accordance with the Contract Documents. One inspection may require multiple visits and more than one day to complete The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections cause by act or commission of Contractor.

9.10.1.1 Final Completion means actual completion of the Work, including any extras or Change Orders reasonably required or contemplated under the Contract Documents other than warranty work as further defined in the Form of Contractor's Final Completion Notice attached hereto and incorporated herein as Exhibit "D

§ 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

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other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) ~~a certificate~~ evidencing 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) ~~if required by the Owner,~~ except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A, notarized subcontractor's lien releases, receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. 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 certification in Texas Education Agency's Certification of Project Compliance, located at www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf;
.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
.5 Maintenance and Instruction Manuals;
.6 Owner's Final Completion Certificate; and
.7 "As-constructed record drawings." At the completion of the Project, the Contractor shall submit one (1) complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

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.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, ~~except that~~and it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner~~, except those arising from~~

~~.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 terms of special warranties required by the Contract Documents; or~~
~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except 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.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract 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 U.S.C. Section 651 *et seq*., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances 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. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

10.1.2 Contractor's employees, agents, Subcontractors, 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 illegal controlled substance; or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall: use, possess, distribute, or sell illegal or nonprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription or over-the-counter drugs; or act in contravention of warnings on medications while performing the Work or while on Owner's premises. Contractor's employees, agents, Subcontractors, or anyone directly or indirectly employed by any of them, shall not distribute or sell alcohol or drugs of any kind to Owner's students or staff, regardless of the location of the distribution or sale.

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

10.1.4 Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a weapon, and Contractor agrees that Contractor's representatives, employees, agents, and subcontractors will abide by same. Weapons may only be permitted in Owner's parking lots if weapons are locked in personal vehicles in Owner's parking lot.

§ 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 Owner's premises, and other persons who may be affected thereby, including the installation of fencing between the Work site and any connecting or adjacent property of Owner, when required by Texas Education Code Section 22.08341;

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

.3 other property at the site or adjacent thereto, such as 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.

§ 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.

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§ 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 personal or real property adjacent to the project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of ~~explosives or other~~ hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel 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 advance by authorities having jurisdiction, in writing, by Owner and Architect. When use or storage of hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner, Program Manager and the Architect reasonable advance notice of the presence or use of such materials, equipment or methods.

§ 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, ~~.~~ except damage or loss 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 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. Additionally, Contractor shall submit a Safety Plan for the Owner's approval prior to commencing the Work.

Unless otherwise specified in the Contract Documents, Contractor shall be responsible for initiating, maintaining, supervising, and enforcing all safety precautions and programs in connection with the Work. It shall be the duty and responsibility of the Contractor and all of its Subcontractors to be familiar and comply with all requirements of ~~Public Law 91-596,~~ 29 U.S.C. §§ 651 *et. Sseq.*, the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all of the provisions of the Act. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection. 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 liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards.

§ 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 do all things reasonably 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.

10.2.9 The Contractor shall promptly report, in writing, to the Owner, Program Manager and Architect all accidents arising out of or in connection with the Work which causes 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, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative, Program Manager and the Architect.

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10.2.10 Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

§ 10.2.11~~8~~ 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 such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The written notice shall provide sufficient detail to enable the other party to investigate the matter. Contractor understands and acknowledges that, under Texas law, Owner has sovereign and/or governmental immunity as to all torts except as to the Owner's permitted use or operation of Owner's motor vehicles, subject to any defenses under law.

§ 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, in writing, the Owner and Architect of the condition. In the event the 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.

10.3.1.1 In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner in violation of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to Owner, Program Manager and Architect in writing

§ 10.3.2 The Work in the affected area shall not thereafter be resumed except by written authorization of Owner if in fact a Hazardous Substance has been encountered and has not been rendered harmless. Contractor shall be responsible for the consequences of any failure to stop work under this Subparagraph 10.3. ~~Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start up~~The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion.

§ 10.3.3 IF THE CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY ~~TO THE FULLEST EXTENT PERMITTED BY LAW, THE OWNER SHALL~~ INDEMNIFIES~~Y~~ AND HOLD HARMLESS THE OWNER, ITS ~~CONTRACTOR, SUBCONTRACTORS, ARCHITECT, ARCHITECT'S~~ CONSULTANTS, TRUSTEES, OFFICERS, ~~AND~~ PROGRAM MANAGER, AGENTS AND EMPLOYEES ~~OF ANY OF THEM FROM AND~~ AGAINST ANY CLAIMS~~, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES~~, ARISING OUT OF OR RELATING TO ~~RESULTING FROM~~SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO ~~PERFORMANCE OF THE WORK IN THE AFFECTED AREA IF IN FACT THE MATERIAL OR SUBSTANCE PRESENTS THE RISK OF BODILY INJURY OR DEATH AS DESCRIBED IN SECTION 10.3.1 AND HAS NOT BEEN RENDERED HARMLESS, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS~~

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~~ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), EXCEPT TO THE EXTENT THAT SUCH DAMAGE, LOSS, OR EXPENSE IS DUE TO THE FAULT OR NEGLIGENCE OF THE PARTY SEEKING INDEMNITY~~COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SUBPARAGRAPH 3.18.

~~For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any applicable local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substance Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"). The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 10.3 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.~~

§ 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 For purposes of this ~~Agreement~~Contract, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any applicable local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substance Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"). The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 10.3 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.~~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 In those instances in which the presence of a Hazardous Substance was set forth in the AHERA documents or In which the Contractor has other written notice of such through information given to Contractor by Owner or its representative prior to execution of the ~~Agreement~~Contract, Contractor shall not be entitled to a Claim for any delays, disruption or interference it encounters. In those instances of Work stoppage due to the existence of such Hazardous Substances which were not set forth in the AHERA plans and of which the Contractor has no other prior notice, Contractor may be entitled to a Claim for delay or Work stoppage if the requirements of Article 15 are not met. ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~

§ 10.4 Emergencies

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

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10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and or compliance with all federal, state, and local statutes, rules, regulations, and orders of any governmental authority applicable to the conduct of the Work.

10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

10.5.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the Contractors.

10.5.2 Final Payment shall not be made until this written certification has been received.

10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system, shall furnish a written certification that the potable water system is "lead-free."

10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the Contractor.

10.7 HAZARDOUS MATERIALS CERTIFICATION

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

ARTICLE 11 INSURANCE AND BONDS

11.0.1 No Work will be commenced, and no equipment or materials can be shipped, until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner, Program Manager and Architect, in writing, of any proposed nonconformity with these requirements, and shall notify Owner, Program Manager and Architect, in writing, of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Contract.

11.0.2 Satisfactory evidence of insurance required by this Article shall be provided to Owner, Program Manager and Architect not later than five (5) business days after execution of the Contract by Contractor. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and additional insured (except as noted in Section 11.0.4) and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations, and additional endorsements, as they are provided to Contractor.

11.0.3 All insurance required herein shall be obtained from a company licensed to do business with the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated no less than "A-" X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation.

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11.0.4 ~~All insurance required herein shall name the Owner, its officers, employees, representatives, or agents, as an additional insured, except Contractor's Worker's Compensation insurance.~~ All liability insurance required herein shall name Dallas ISD, it's officers, employees, volunteers, elected officials, Program Managers, Architects and their officers, employees, representatives, risk management consultants, or agents, as additional insureds, except Contractor's Worker's Compensation insurance and Professional Liability insurance.

11.0.5 ~~All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives, or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner as provided for in Section 11.3.~~ All insurance required herein shall be primary insurance as respects the additional insured required by 11.0.4. Any insurance maintained by an additional insured shall be in excess of such insurance and shall not contribute with such primary insurance. All insurance shall be written on an occurrence basis where reasonably available, with the exception of professional liability policies, and shall contain a waiver of subrogation in favor of- the Owner, Program Manager, and Architect on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

11.0.6 Any failure of Contractor to comply with the reporting provision of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives, or agents.

11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor. Contractor shall be responsible for all policy deductibles and self-insured retentions.

11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others. Contractor will cooperate with Owner or its designated representative to expeditiously resolve claims involving injuries to third parties, damage to the Work, or project delays. This cooperation will include providing Owner with monthly insurance carrier summary reports of builder's risk, general liability, professional liability and pollution liability claims pertaining to the Owner's projects. Contractor will provide Owner with Contractor and insurance carrier contact names and phone numbers. Contractor will be responsible for timely reporting of all claims and regulatory requirements, including MMSEA Section 111.

11.0.9. Maximum Allowable Charges for CMAR CCIP Programs

In the event that the Contractor elects to utilize a Contractor Controlled Insurance Program (CCIP) the maximum to be considered reimbursable costs under this Contract will be 2% of the final Cost of the Work (including general conditions costs) but not including Contractor Fee or CCIP charges and not including the costs of any subcontracts that included the cost of insurance covered by CCIP.

This 2% cost factor will cover all insurance required to be carried by the prime contractor and all applicable subcontractors covered by this Contract (specifically 1% for worker's compensation insurance, and 1% total for general liability insurance, excess liability insurance, and umbrella liability insurance combined).

Any contractor costs incurred in connection with the Contractor's elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this section, will be considered to be covered by the Contractor's Fee. Note: Contractor will not be reimbursed for any deductible stated in the CCIP policy. The deductible is considered covered by the CCIP percent and/or the Contractor Fee.

11.0.10 Maximum Allowable Charges for CMAR Liability Insurance Required by Contract

For jobs not covered by Owner Controlled Insurance Programs (OCIP) or Contractor Controlled Insurance Programs (CCIP), the amount to be reimbursed to the Contractor for all contractually required liability insurance (professional liability, general liability, umbrella liability, excess liability, and auto liability will be actual costs not to exceed a total of .65% of the net reimbursable Cost of Work (not including liability insurance and not including Contractor Fee.) If the Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this Contract provision, the difference shall be considered to be covered by the Contractor's Fee. For

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jobs covered by CCIP or OCIP, the costs of any other liability insurance will be considered to be covered by the Contractor's Fee.

11.0.11 Maximum Allowable Charges for Subcontract Default Insurance provided by CMAR in lieu of Subcontract Performance Bonds

In the event that Contractor elects to utilize a subcontractor default insurance program (sometimes referred to as SUBGUARD), the maximum amount to be considered reimbursable costs under this Contract will be .75% of the total amount of subcontracts enrolled in such an insurance program. Reimbursement for enrollment in any such program will be limited to subcontracts in excess of $~~2~~500,000.

Any Contractor costs incurred in connection with the Contractor's elected subcontractor default insurance program that exceeds the amount reimbursed by the Owner under the formula in this section, will be considered to be covered by the Contractor's Fee. In the event that Contractor elects to bond selected subcontractors rather than enroll them in the subcontractor default insurance program, the net cost to purchase any such bonds will be reimbursed in lieu of the .75%. Note: Contractor will not be reimbursed for any deductible stated in the Subguard policy. The deductible is considered covered by the .75% and/or the Contractor Fee.

In the event that the Contractor elects to provide Subguard or a similar program of subcontractor default insurance, then the program and the coverage provided by the Contractor shall extend to any additional costs incurred by the Contractor to replace or supplement the forces of a subcontractor to provide the Work, and such circumstances shall include, but not be limited to, any partial or full termination of the contract of a subcontractor for convenience or otherwise, unless the Owner specifically directs the Contractor, in writing, to terminate the contract of a subcontractor for convenience.

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain, in a company or companies with a "Best Rating" of "A minus" or better, and licensed to do business in the State of Texas, ~~-~~such insurance as will protect, the Contractor, ~~-~~them and the Owner, Program Manager and Architect~~the Owner~~, ~~-~~from claims that may arise out of, or result from, the Contractor's operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, at a minimum of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 11.1, in the ~~Agreement~~Contract or elsewhere in the Contract Documents. ~~The Contractor shall purchase and maintain the required~~ Such insurance shall include the following:~~from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~

.1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limit specified for mandatory coverage for the duration of the Project (see Exhibit A).

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person, or property damages arising out of ownership, maintenance, or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations;

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18;

.9 Claims for Products, Premises and Operations; and

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.10 Claims for damages to the Work itself, through builder's risk insurance, pursuant to AIA A101-2017, Exhibit A, or AIA A133-2019, Exhibit ~~B~~A.

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

~~8. Contractor's Professional Liability, if applicable~~

~~If the Work performed by the Contractor or its subcontractors will include some responsibility for design, the Contractor will purchase or cause to be purchased and maintained a professional liability policy. The limits of coverage will not be less than:~~

~~$1,000,000 each claim and annual aggregate~~

~~Coverage will include:~~
~~A waiver of subrogation in favor of Owner, Program Manager and Architect~~
~~A retroactive date that is the earlier of the start of design or the Work~~
~~Coverage for negligent acts, errors or omissions arising out of design or engineering services~~
~~An extended reporting period of 5 years after final completion~~

9. All Risk Builder's Risk Insurance, if applicable

If Contractor is a Construction Manager-at-Risk, then, as specified in Amendment Number One, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.4 for Builder's Risk Insurance requirements.

11.1.2.1 The Contractor shall furnish separate payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each bond to be in a total amount equal to 100% of the Contract Sum or Guaranteed Maximum Price, if the Project is a Construction Manager at Risk project, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five (5) business days after execution of the Contract by Owner. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contracts is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth (10^{th}) day after the date of the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the Owner to the District to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bond shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq*. and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-"X according to the latest posted ratings on the A.M. Best website, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten (10%) percent of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten (10%) percent of the surety company's capital and surplus with one or more insurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten (10%) percent of the reinsurer's capitals and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

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If the Contract amount is $100,000 or more, the Contractor shall furnish a Performance Bond equal to one hundred percent (100%) of the Contract Sum. If the Contract amount is $25,000 or more, the Contractor shall furnish a Payment Bond equal to one hundred percent (100%) of the Contract Sum. There shall be separate bonds, the terms of which and the sureties of which are satisfactory to the Owner and which comply with Chapter 2253, Texas Government Code, Title 10 (Vernon Supp. 1999), and all other applicable law. Contractor shall furnish a copy of the Payment Bond to each of its Subcontractors upon request. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be furnished.

11.1.2.2 Certificates of insurance acceptable to the Owner, Program Manager and Architect shall be filed with the Owner and Architect prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning a fifty percent or greater reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both shall be furnished by the Contractor to the Owner, Program Manager and Architect in writing within five (5) business days of Contractor's information and belief.

Contractor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except with respect to the limits of the insurer's liability

11.1.2.3 ~~2~~ The Contractor shall deliver the required bonds to the Owner and Architect not later than five (5) business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative with Architect's recommendation.

11.1.2.3 4 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

11.1.2.5 ~~4~~ Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contactor may be withheld until the Contractor provides additional surety or security.

11.1.2. ~~5~~ TEXAS WORKERS' COMPENSATION INSURANCE

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

Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's/person's work on the Project is required for the duration of the Project, including any Warranty Period.

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

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

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

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

If the coverage period shown on the contactor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

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

2. No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

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

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

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

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

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

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

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

   a. A certificate of coverage, prior to the other person beginning work on the project; and

   b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project:

5. Retain all required certificates of coverage on file for the duration of the project and for one year

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thereafter;

6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days
after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the
Certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

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

28 T.A.C. Section 110.110(i).

11.1.2.6 BUILDER'S RISK INSURANCE

Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance if applicable, In the amount of the initial Contract Sum, or if applicable, Guaranteed Maximum Price, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Work at the site on a replacement cost basis. Policy shall contain no co-insurance clause. Coverage shall insure against the perils of fire, lightning, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, flood, earthquake, cold testing, collapse, subsidence, sinkhole, damage resulting from faulty workmanship or faulty materials, terrorism for certified and non-certified acts, law and ordinance coverage for renovations, and all other perils, and shall include materials stored on-site, off-site, and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of the Contractor, subcontractors, and sub-contractors. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Substantial Completion

§ 11.1.2.7 ~~.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.

§ 11.1.2.8 ~~.4~~ Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor ~~becomes aware~~knows or should know of an impending or actual cancellation ~~or expiration~~ of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation ~~or expiration~~. 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 written notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. At least 30 calendar days prior to the date of expiration of any policy required by Section 11.1.1, Contractor shall provide Owner written notice of the impending expiration.

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§ 11.2 Owner's and Architect's InsuranceOwner's Insurance

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. The Owner shall be responsible for purchasinge 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. 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. TheIf Owner occupies or uses any completed or partially-completed potion 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.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.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. Partial occupancy or use shall not commence until the insurance company providing this insurance has consented, in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

§ 11.2.3 Architect shall be responsible for purchasing and maintaining the Architect's liability insurance, worker's compensation insurance, and errors and omissions insurance as provided in the Owner-Architect AgreementContract Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. All insurance required herein shall contain a waiver of subrogation in favor of Owner, Program Manager

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and Architect on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise.

§ 11.3.2 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~ The Owner, as fiduciary, shall have power to adjust and settle any loss arising out of the Work, with insurers regardless of the purchaser of the insurance policy. The Contractor upon receipt of proceeds shall, as a fiduciary, pay all subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require subcontractors to make payment to their sub-subcontractors in similar manner. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor with the insurance proceeds upon issuance of a Notice to Proceed from the Owner.

11.3.3 Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. ~~The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

~~11.4.3 WAIVERS OF SUBROGATION~~

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents and employees, and (3) Program Manager for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 11.4, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The foregoing waiver afforded the Architect, his agents, and employees, shall not extend the liability imposed by Section 3.18.3. The Owner or Contractor, as appropriate, shall require of the Architect, Separate Contractors, Subcontractors, Sub-subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 11.4.3. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, any separate contractors, subcontractors, sub-subcontractors, agents, and employees of any of them by appropriate agreements, similar waivers each in favor of the other parties enumerated herein.~~

~~11.4.4 The Contractor shall pay all subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require subcontractors to make payment to their sub-subcontractors in similar manner.~~

~~11.4.5 Contractor's builder's risk insurance shall be endorsed to allow partial occupancy (permission to occupy) by Owner. Contractor shall ensure that such partial occupancy will not cause cancellation, lapse, or reduction of this insurance.~~

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the ~~Agreement~~Contract shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of ~~any applicable mortgagee clause and of~~ Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

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§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor and Architect of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor and the Architect shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor and/or the Architect does not object, the Owner shall settle the loss and the Contractor and Architect shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor and/or Architect timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 CORRECTION OF WORK

12.2.1 Before Or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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 and Program Manager's services and expenses made necessary thereby, shall be at the Contractor's expense.

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such written notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of written notice from the Owner or Architect, the Owner may correct the Work as provided in 12.2.2.1.1. 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 it in accordance with Section 2.5.

12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store

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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 Contactor 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 performance 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 the corrected Work. Any corrective work performed or to be performed under or pursuant to Paragraph 12.2 shall be warranted to the same extent as the Work is warranted hereunder for the greater of the remainder of the applicable warranty (corrective) period or ninety (90) days from the date such corrective work has been completed.

§ 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 by the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

12.2.4.1 Where nonconforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Architect's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming work shall be at the Contractor's expense, and performed by the Owner's testing laboratory if such services are reasonably required by the Architect. All corrected work shall be retested at the Contractor's expense. Reasonable Architectural or Program Manager Services required to analyze nonconforming Work shall be paid for by the Contractor.

§ 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. Nothing contained in this Paragraph 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or another party) that are destroyed 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 of the Contractor as well as Work done directly by employees of the Contractor. The provision for this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor for performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

12.2.8 If, however, 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 written agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

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§ 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

13.1.1 ~~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 Dallas , county in place whichere the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ The Contract and any disputes related to the Work shall be governed by the laws of the State of Texas. The Contract is deemed performable entirely in Dallas, Dallas County, Texas. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract or the Work, shall be brought in the State District courts of Dallas County, Texas. In the event of litigation, the substantially prevailing party shall be entitled to its reasonable and necessary attorney's fees that are equitable and just.

§ 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 provided in Section 13.2.2, Nneither party to the Contract shall assign the Contract, as ain 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.~~ The Contractor shall not assign the Contract as a whole, or in part, without written consent of the Owner.

§ 13.2.2 The invalidity of any part or provision of the ~~Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the~~ Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contract Documents. The Owner may, without consent of the Contractor, assign the Contract in whole or in part. In such event, the assignee shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignments. ~~The Contractor shall execute all consents reasonably required to facilitate the assignment.~~

§ 13.3 Rights and Remedies

§ 13.3.1 Written notice shall be deemed to have been duly served only if the writing is delivered in person to the office of the party set out ~~O~~on the first page of the Standard Form of ~~Agreement~~Contract Between Owner and Contractor, or to such other address as has been previously clearly identified in writing by the addressee, or sent by registered or certified mail to that address. 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~~,~~ or 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. The application of a time-is-of-the-essence clause as to any action or duty required of Contractor by the Contract Documents shall not be waived by course of performance or course of dealing by Contractor.

13.3.3 ~~4~~ Neither Contractor nor any of its materialmen, laborers or Subcontractors shall have any lien rights against the Owner's lands, building funds, materials or other property. No materialmen, laborers or Subcontractors of the Contractor shall have any enforceable rights against the Owner on this Contract. Materialmen, laborers and Subcontractors of the Contractor may have rights under any Payment Bond provided by the Contractor, but cannot look to the Owner for any help in enforcement of those rights.

13.3.4 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.

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§ 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 with an independent testing laboratory or entity employed by the Owner for this purpose ~~acceptable to the Owner,~~ or with the appropriate public authority, and shall bear all related costs of 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 construction materials, engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by the Owner. Owner shall bear the normal costs of these services, but not any excess costs attributable to Contractor caused scheduling problems, other Contractor error or retesting. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe be present for such procedures. ~~The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded.~~ The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Owner shall provide or contract ~~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. Architect, Owner, and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If such 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 a 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 ~~P~~payments due and unpaid under the Contract Documents shall bear interest from the date payment is overdue at the rate provided by Texas Government Code Section 2251.025~~the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner received Architect's invoice or Contractor's completed Application for Payment for the Architect, whichever is later, if Owner's Board of Trustees meet more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meet once a month or less frequently. No interest shall be due on sums properly retained by Owner, except ~~expect~~ 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 shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment

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without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or 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, Construction Documents, 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 a least twelve (12) years, after the date of Final Completion of the Project. Within five (5) days of Owner's request, Contractor shall make such Job Records available for inspection, copying, and auditing by the Owner, Architect, or other 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 property 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 Contract Documents related to the Project, subject to the provisions of Section 13.7.1, 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.

13.7.6 Commencement of Statutory Limitation Period, As between the Owner and Contractor: after Final Certificate for Payment.

13.7.7 At any time during the term of this ~~Agreement~~Contract and for a period of ten ~~four~~ (~~4~~10) years thereafter, the Owner or a duly authorized audit representative of the Owner, or the State of Texas, at its expense and at reasonable times, reserves the right to audit the Contractor's records and books relevant to all services provided under this ~~Agreement~~Contract. In the event such an audit by the Owner reveals any errors/overpayments by the Owner, the Contractor shall refund the Owner the full amount of such overpayments within thirty (30) day of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owing the Owner from any payments due the Contractor.

13.8 NONDISCRIMINATORY EMPLOYMENT

13.8.1 In connection with the execution of this Contract, the Contractor shall fully comply with the District non-discrimination requirement cited below.

"The Dallas Independent School District, as an equal opportunity educational provider and employer, does not discriminate on the basis of race, color, religion, sex, national origin, disability, sexual orientation and/or age in educational programs or activities that it operates or in employment decisions. The District is required by Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Age Discrimination Act of 1975, as amended, as well as board policy not to discriminate in such a manner. (Not all prohibited bases apply to all programs.)"

During the performance of this Contract, the Contractor further agrees as follows:

.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or age;

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.2 The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these non-discrimination provisions.

Submittal to Owner of reasonable evidence of discrimination will be grounds for termination of the ~~Agreement~~Contract.
This policy does not require the employment of unqualified persons.

13.9 CERTIFICATION OF NONSEGREGATED FACILITY

13.9.1 This Subparagraph is applicable to Contracts and Subcontracts exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity Clause.

13.9.2 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 breach of this certification is a violation of the Equal Opportunity Clause in this proposed 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. It further agrees that (except where it obtained identical certifications from proposed consultants for specific time period), it will obtain identical certification from proposed Subcontractors prior to the award of a Contract exceeding $10,000.00 which 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 non-segregated 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).

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

13.10 PREVAILING WAGE RATES

13.10.1 In compliance with laws of the State of Texas relating to labor Texas Government Code Section 2258.001 *et seq.* the building construction wage rates listed in the Contract Documents have been ascertained and determined by the Owner as the general prevailing rates in the locality of Dallas Independent School District for the classifications listed. The Contractor and each Subcontractor shall pay to all laborers, workers and mechanics employed by them in the execution of this Contract not less than such rates for each craft or type of worker or mechanic needed to execute the Contract. If it becomes necessary to employ any person in a trade or occupation not herein listed, such person shall be paid not less than an hourly rate fairly comparable to the rates shown hereinafter.

13.10.2 This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates named.

13.10.3 In compliance with the above cited law the Contractor shall forfeit, as a penalty to the Owner, Sixty Dollars ($60.00) for each laborer, worker or mechanic employed, for each calendar day, or portion thereof, such laborer, worker or mechanic is paid less than the rates stipulated hereinafter for any work done under this Contract by him or any Subcontractor under him.

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13.10.4 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.

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

13.11 CERTIFICATION OF ASBESTOS-FREE PROJECT

13.11.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction shall be asbestos free. The General Contractor shall provide certification for himself, all subcontractors, vendors, suppliers, and other entities, stating that materials and/or equipment used in the construction of the project do not contain asbestos in any form or concentration. Certification letters shall be dated, shall reference this specific Project, and shall be signed by not less than two officers of the construction company.

13.11.2 Final Payment shall not be made until this letter of certification has been received.

13.12 **CERTIFICATION OF LEAD-FREE POTABLE WATER SYSTEM**

13.12.1 Contractor shall submit to the Architect a letter, addressed to the Owner, stating that any components of the potable water system installed by the Contractor are lead-free as defined by the Safe Drinking Water Act Amendment of 1986 and the Lead Contamination Control Act of 1988.

13.13 Responsibility For Contractor's Forces. The Contractor shall be responsible for the actions of Contractor's forces, and Subcontractor's forces to enforce the Owner's drug-free, alcohol-free, and tobacco-free zone. Contractor agrees to abide by Owner's policies prohibiting the use of tobacco, alcohol or illegal drugs in any form on any property owned, operated, or maintained by the Owner. Contractor agrees to require all subcontractors and sub-subcontractors to abide by these policies,. Violation of this provision shall constitute a material breach of this agreement.

13.14 **FAMILY CODE CHILD SUPPORT CERTIFICATION**

By signing this ~~Agreement~~Contract, the Contractor certifies as follows: "Under Section 321.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

13.15 **NON-COMPENSATION REQUIREMENT**

The Owner may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the Owner to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Contractor is described as vendor in the statutory quote below:

"Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

13.16 ~~8~~ PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

13.16.1 ~~8~~ 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.

13.16.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; the location and employment of security devices, security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

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13.16.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq.*, and the Texas Open Meetings Act, Texas Government Code, Section 551.001. *et seq.*

13.16.4 All information owned, possessed, or used by Owner which is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for Owner, which is not generally known to the public, shall be confidential and Contractor shall not, beginning on the date of first association or communication between Owner and Contractor and continuing through the term of this ~~Agreement~~Contract and at any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any such confidential information, unless required by law. Except when defined as part of the Project, Contractor shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of Owner in connection with the Project, or release any information relative to the Project for publications, advertisement or any other purpose without prior written approval of Owner. Contractor shall obtain assurances similar to those contained in this Subparagraph from persons, agents, and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause Owner irreparable injury and damage. Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief to prevent or otherwise restrain a breach of this ~~Agreement~~Contract.

.1 Contractor acknowledges and agrees that the Owner has an interest in maintaining and otherwise protecting the image and reputation of the Owner's official logo or emblem and any other trademarks, copyrighted or otherwise protected materials of the Owner (hereinafter referred to as the "Owner's Protected Materials"), and that in order to accomplish this purpose, the Owner must in all cases assure itself that the Owner's Protected Materials are at all times used in a manner consistent with the Owner's policies, administrative regulations, and this ~~Agreement~~Contract.

.2 Contractor agrees that the Owner must, therefore, have the right to examine and approve or disapprove such use in writing in advance of use, the contents, appearance and presentation of any and all advertising, promotional or other similar materials proposed by the Contractor to be used in connection with any advertising or promotion utilizing Owner's Protected Materials.

13.17 ~~8~~ The Contractor shall ~~have~~ bear full responsibility for utilizing means and methods that may result in an overstress of any structure or any part or member of it during construction. The Contractor shall fully check the effect of his
operations in this regard, and shall provide all temporary support and connections required.

13.18 ~~9~~ The Contractor shall protect and be responsible for any damage to or loss of its (his/her) work, tools, equipment, or material, from the date of the Contract until the acceptance of the Work and shall make good without cost to the Owner, any damage or loss that may occur during this period. All material affected by weather shall be covered and protected to keep it from damage while being transported to the site, as well as when it is stored on the site. The Contractor at its (his/her) own expense and option shall employ watchmen or erect fencing at such time as necessary to protect his work, tools, equipment or material by the Contractor and the fact that the Owner has a watchman, if any, shall not mean that the Owner has undertaken, nor does the Owner undertake, to protect work, tools, equipment and materials from theft or mysterious disappearance.

13.19 The Contractor should only take direction on any issues regarding the Project when provided by the Owner's Office of Construction Services or the Program Manager or Architect.

13.20 The Contractor and subcontractor shall ensure that on-site fraternization shall not occur between personnel under the Contractor's or subcontractor's direct or indirect supervision and students, school employees and the general public.

13.21 PARTNERING
Contractor will participate in a partnering process if requested by Owner.

13.22 AS-BUILT DRAWINGS
Prior to issuance of the Certificate of Final Completion by Architect and Program Manager, the Contractor shall submit to Architect a complete set of as-built drawings, with all changes made during construction, including

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concealed mechanical, electrical and plumbing items clearly shown. The Contractor shall submit these drawings in a medium acceptable to the Architect. Based upon the as-built drawings received from Contractor, Architect shall, within thirty days after receipt of the as-built drawings from Contractor, complete Record Drawings.

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 ~~3~~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, under direct or indirect contract with the Contractor, for any of the following reasons, which are the sole grounds for termination under this Subparagraph 14.1.1.~~:~~;

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

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

.3 ~~Because the 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, under direct or indirect contract with the Contractor, 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 seven (10) days' written 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 as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination~~If the Work is stopped for ninety (90) consecutive days for any reason described in Subparagraphs 14.1.1 or 14.1.2, the Contractor may, upon fourteen (14) days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages to date of termination.

14.1.4 If the Work is stopped for a period of ninety (~~6~~90) consecutive days through no act or fault of the Contractor, or 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~~ persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ~~twenty~~ fourteen (~~20~~14) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

14.1.5 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, neither the Owner or any other party shall be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 14.1.1, 14.1.2 and 14.1.3.

14.2 Termination by the Owner for Cause

14.2.1 The Owner may terminate the Contract if the Contractor

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

.2 fails to make payment to Subcontractors or ~~s~~Suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or ~~s~~Suppliers;

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

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.4 otherwise is guilty of ~~substantial breach of a provision of~~ a material breach of provision of the Contract Documents;

.5 fails to furnish the Owner, upon written 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; ~~or~~

.6 engages in serious or repeated worker misconduct in violation of Article 3.3.2;

.7 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

.8 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contact Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, subject to any prior rights of the surety, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 ~~Exclude the Contractor from the site and t~~Take possession of the site and 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 Contractor's removal.

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds~~ costs of finishing the Work, including compensation for the Architect's and Program Manager's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum or Guaranteed Maximum Price (if the Project is a Construction Manager at Risk project), ~~such excess shall be paid to~~ then the Contractor and/or its Surety shall pay the difference to the Owner. ~~If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.~~ The amount to be paid to the ~~Contractor or~~ Owner, ~~as the case may be,~~ shall be certified by the Architect ~~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 assignments 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 Documents. 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.

If a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, the Surety shall promptly remedy the default by completing the Contract in accordance with its terms and conditions, or by obtaining a bid or bids in accordance with its terms and conditions. At Owner's election, upon determination by the Owner and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for a Contract between such bidder and the Owner, and make available as Work progresses sufficient funds to pay the cost of completion less the balance of the Contract Sum, but not exceeding the Penal Sum of the bond and other costs and damages for which the Surety may be liable under the bond. The phrase 'balance of the Contract Sum' as used herein shall mean the total amount payable by the Owner to the Contractor under the Contract and amendments thereto less the amount previously paid by the Owner to the Contractor.

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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 Owners, 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, Guaranteed Maximum Price, and Contract Time shmayll be adjusted, by mutual written agreement, for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit~~. An adjustment shall be made to the Contract Sum calculated under Article 7. 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. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

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

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

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

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

§ 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 ~~costs incurred by reason~~ of ~~the~~ termination~~, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement~~. Such payment shall not cause the Contract Sum, or Guaranteed Maximum Price, if the Project is a Construction Manager at Risk Project, 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.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is ~~any demand or assertion by one of the Contractor parties seeking, as a matter of right, payment of additional compensation under the Contract Documentsmoney, interpretation of the Contract Document terms, a change in the Contract Time;, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the partyContractor making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.~~ any demand or assertion by the Contractor that it should be paid more money than the

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Contract Sum or granted more contract time by the Owner because of action or inaction on the part of Owner, any Owner representative, Architect, or any party for whom Owner is responsible, or any party with whom Owner has separately contracted for other portions of the Project, including, but not limited to, any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that there has been a failure of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that actions or omissions of the Owner have been wrongful related in any way to the Work, that a time extension grant was inadequate, that there has been a breach of contract, or that Contractor is entitled to any other relief, on any legal or equitable theory, related to the Work or the Contract. This definition of Claim is not intended to create any right of action where the right of action does not otherwise exist under applicable law or other provisions of this Contract.

§ 15.1.2 Notice Requirement ~~Time Limits on LitigationClaims~~

~~The Owner and Contractor shall commence all Claimslitigation and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in anythe case of the Owner, not more than 120 years after the date of FinalSubstantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~ Within fourteen (14) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within fourteen (14) calendar days of Contractor's discovery of the first occurrence of an event that Contractor has any reason to believe might result in a Claim if the first occurrence of the event was willfully hidden from the Contractor, the Contractor shall file a written document clearly captioned "Notice of Claim" with Owner, Program Manager and the Architect. 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 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, the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner have timely, specific Notice of a potential problem in order that the problem can be mitigated promptly.

15.1.2.1 In addition to the Notice required by Subparagraph 15.1.2, the Contractor shall also file a document captioned "Claim" with the Owner, Program Manager and Architect within ninety-one (91), days of occurrence of any event resulting in a Claim for damages, giving notice of the Claim. Contractor agrees that this is a reasonable Notice requirement. Any Claim or portion of a Claim that has not been made the specific subject of a Notice strictly in accordance with the requirements of this section is waived.

§ 15.1.3 ~~Notice of Claims~~ Continuing Contract Performance

After receipt of a Notice of Claim, the Architect shall have fourteen (14) calendar days to render a decision, which shall be stated in writing and delivered to the Contractor, the Owner and the Program Manager via facsimile, regular mail or hand delivery. If the Architect fails to render a decision in writing with the fourteen (14) days, the Claim shall be deemed accepted. Within five (5) calendar days of receipt of the Architect's written decision, Contractor may file a written appeal of the decision to the Program Manager. The Program Manager shall have ten (10) calendar days to render a decision, which shall be stated in writing and delivered to the Contractor, Architect and the Owner via facsimile, regular mail or hand delivery. If the Program Manager fails to render a decision in writing within the ten (10) days, the claim shall be deemed accepted. Within five (5) calendar days of receipt of the Program Manager's written decision, Contractor may file a written appeal of the decision with the Deputy Superintendent of Business Services. Within fourteen (14) calendar days of the receipt of an appeal, an Appeals Board consisting of the Deputy Superintendent of Business Services, Chief Operations Officer, and a representative of the offices of Legal Services shall render a written decision. Any Claim determination requiring a Change Order must be approved by the Board of Trustees. The filing, or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any Claim, excepting termination or under Owner's direction to stop the Work. Any Claim that would require expenditure in excess of $10,000.00, or that would require a Change Order, must be reviewed by the Program Manager and the Appeals Board using the appeals process described in this section.

15.1.3.1 Claims by ~~either~~ the ~~Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the ~~other party~~Owner and to the ~~Initial Decision Maker with a copy sent to the~~ Architect~~, if the Architect is not serving as the Initial Decision Maker~~. Claims by Contractor~~either party~~ under this Section 15.1.3.1 ~~shall~~must be

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initiated within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the ~~c~~Contractor~~laimant~~ first knew or should have known~~recognizes~~ the condition giving rise to the Claim, whichever is ~~lat~~earlier. Claims must be initiated by written notice titled: "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representatives. The Notice shall clearly set out the specific matter of complaint, and the impact which may occur or have occurred as result thereof, to the extent that the impact can be assessed at the time of the Notice. If the impact 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. Claims not filed as required by this Section shall be waived.

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

15.1.3.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

§ 15.1.4 ~~Continuing Contract Performance~~ Claims Handling Following Construction

The acceptance of final payment shall constitute a waiver of Claims by the Contractor, which have not previously been identified in a Notice of Claim under 15.1.2 and a Claim under 15.1.2.1 and specifically reserved in the final Application for Payment.

§ 15.1.4.1 Time Limits on Litigation. The Owner and Contractor shall commence all litigation whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the dispute resolution method selected in the Contract and within the period specified by applicable law, but in the case of the Owner, not more than eight (8) years after the date of Final ~~Substantial~~ Completion of the Work, unless extended in accordance with Texas Civil Practice and Remedies Code Section 16.009. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

15.1.4.2 Pre-Litigation Mediation

~~.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7, as amended, and Article 14, as amended, 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.~~ Except as to claims for injunctive relief, neither party may commence litigation relating to any Claim arising under this ~~Agreement~~Contract without first submitting the Claim to Mediation. The parties shall share the mediator's fee and any filing fees equally, and the mediation shall be held in Dallas, Texas. ~~Agreement~~Contracts reached in mediation must be approved by the Board of Trustees and shall thereafter be enforceable as settlement agreements in any court having jurisdiction thereof. Mediation shall be conducted by a mediator selected jointly by the Owner and Contractor.

15.1.4.3 ~~The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims For Concealed Or Unknown Conditions. Only if conditions are encountered at the site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, (b) unknown physical conditions of an unusual nature, which 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 or (c) in the case of renovation Work, any condition of the pre-existing construction to be renovated, that is materially different from any of the conditions that could reasonably have been expected to be present in preexisting construction of the age and type encountered on the Project, then Contractor shall be entitled to make a Claim if it can satisfy all of the requirements of Paragraph 15.1.

15.1.5.1 No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, review and preconstruction services which were given to Contractor

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by Owner, Architect or Owner's representative or which Contractor had the opportunity to make or should have performed in connection with the Project.

15.1.6 Calculating Claim Amount

In calculating the amount of any Claim, the following standards will apply:

.1 No indirect or consequential damages will be allowed;

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on; Estimated losses of labor efficiency, or on a comparison of planned man loading to actual man loading, or any other analysis that is used to show damages indirectly;

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

.4 The maximum daily limit on any recovery for delay shall be the amount originally estimated by the Contractor for job overhead costs divided by the total number of calendar days of Contract Time called for in the original Contract;

.5 No damages will be allowed for home office overhead or other home office charges, or any Eichlay formula calculation; and

.6 No profit will be allowed on any Claim.

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of ~~cost and of~~ probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and prevented the execution of major items of work on normal working days ~~had an adverse effect on the scheduled construction~~.

15.1.6.3 4 Time extensions may be granted for rain days in any month when the cumulative number of rain days during that month exceeds the number scheduled, provided that the rainfall prevented the execution of major items of work on normal working days. No day will be counted as a rain day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The number of rain days shown in the above schedule for the first and last months of the Contract will be prorated in determining the total number of rain days expected during the period of the Contract. No delays or extensions shall be granted for mud conditions.

15.1.6.4 ~~5~~ 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 or under Contractor's control. Claims for extension of time may only be considered because of rain delays, or because of 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. Only claims for extension of time shall be considered because of hindrances or delays not the fault of either Contractor or Owner, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Board approval shall be required for any extension of time. No damages shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

15.1.6.5 ~~6~~ Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, rain day, or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.

§ 15.1.7 Waiver of Claims for Consequential Damages

~~The Contractor and Owner waives all Claims against Ownereach other 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. This mutual waiver includes~~

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.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

15.1.8 Injury Or Damage To Person Or Property

If either party to the Contract suffers injury or damage to persons or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party as provided herein. The Notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 15.2 Initial Decision Resolution of Claims and Disputes

§ 15.2.1 Claims by the Contractor against the Owner, includingexcluding those alleging an error or omission by the Architect, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Iinitially Decision Maker for initial decision. to tThe Architect for written recommendationwill serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If 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 decision has not been rendered within 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architectafter the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Architect shall Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the Contractorclaimant or a response with supporting data from the other party, or (2) make a written recommendation to the Owner, with a copy to the Contractor. reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the ArchitectInitial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the ArchitectInitial Decision Maker in making a written recommendationrendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 Owner, Architect, or their respective agents, within five (5) working days of request by Owner, Architect, or their respective agents. Job records must be retained by Contractor and all subcontractors for a least twelve (12) years after the date of Final Completion of the Project. If the ArchitectInitial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the ArchitectInitial Decision Maker 1when the response or supporting data will be furnished, or (3) advise the ArchitectInitial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision

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~~Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution~~ Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustments to the Contract Sum or Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 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 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~

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

§ 15.3 ~~Mediation~~Alternative Dispute Resolution

§ 15.3.1 ~~Claims arising out of or related to the Contract, except those waived shall, be subject to mediation~~ Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation out of such Claims. Claims for injunctive relief shall not be subject to this Section.

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation Requests for mediation shall be filed in writing, with 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 parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located~~

§ 15.3.3 ~~The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties, if approved by the Board of Trustees, and if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.~~

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1.

§ 15.4 No Arbitration

§ 15.4.1 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.

§ 15.4.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

§ 15.4.2 ~~The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

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§ 15.4.3 ~~The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 15.4.4 ~~Consolidation or Joinder~~

§ 15.4.4.1 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

§ 15.4.4.2 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

§ 15.4.4.3 ~~The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. By entering into this Contract, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

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

ARTICLE 16 CONTRACTOR ACCOUNTS, RECORDS, AND INSPECTION

16.1 Contractor, and all subcontractors, 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, and all subcontractors, shall make sure 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. Job Records must be retained by Contractor and all subcontractors for at least twelve (12) years after the date of Final Completion of the Project.

16.2 Contractor~~'s~~ and all subcontractors' records, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned; bond and insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to any matters related to the Contract (including interviews with Contractor's personnel and Subcontractor's personnel) shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Contractor compliance with Contract requirements, (b) compliance with Owner's business ethics policies, and (c) compliance with provisions for pricing or claims submitted by the Contractor or any of its payees. The Owner or its designee shall be afforded access to all of the Contractor and all subcontractors'~~s~~ records pursuant to the provisions of this Article throughout the term of this Contract and for a period of twelve (12) years after final payment or longer if required by law.

ARTICLE 17 BUSINESS ETHICS

17.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, its Program Managers, or its Architects, or to family members of any of them. At any time Contractor believes there may have

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been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors or vendors to Owner's personnel, its Program Managers and its Architects

17.2 The Owner may, by written notice to the Contractor, cancel the Contract for Construction without liability to the Contractor if it is determined by the Owner that gratuities, in the form of entertainment, gifts, or anything of monetary value, were offered or given by the Contractor, or any agent, or representative of the Contractor, to any officer or employee of the Dallas Independent School District with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with the respect to the performing of such a contract. In the event the Construction ~~Agreement~~Contract is cancelled by the Owner pursuant to this provision, Owner shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

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Executed this day of , .

OWNER:	CONTRACTOR:
Title:	By: Title:

DALLAS INDEPENDENT SCHOOL DISTRICT	**GENERAL CONTRACTOR NAME**
OWNER *(Signature)*	CONTRACTOR *(Signature)*
Dwayne Thompson, Chief Business Officer *(Printed name and title)* Date	GC Signer's Printed Name, Title *(Printed name and title)* Date

Approved As To Form:

SCHOOL ATTORNEY *(Signature)* Date

DRAFT

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Construction Manager-At-Risk (CMAR)

Small Business Office Compliance Guidelines and Forms

This form should be completed and signed by the Prime Vendor/Construction Manager. This form must be attached to any procurement document submitted in response to an RFQ and are due by the deadline stated in the RFQ advertisement.

Proposal Title:		**Proposal Number:**	

Company Information					
Company Name:		**Tax ID#**			
Company Address:					
City:		**State:**		**Zip:**	

Is your Company a Certified Minority or Woman Owned Business (M/WBE)?	☐ **Yes**	If "**Yes**," include your current certification, ethnicity and gender information below. For a list of Dallas ISD Recognized M/WBE Certification Agencies, Refer to Section 10 on Page 12.
	☐ **No**	If "**No**," indicate your ethnicity & gender below.

Certification Information			
M/WBE Certification Agency	**M/WBE Certification Number**	**Ethnicity**	**Gender**

Authorized Agent's Information	
***Authorized Agent's Name:**	
Authorized Agent's Phone:	
Authorized Agent's Email:	

***** *Authorized Agent is a person who has the authority to enter into a legally binding contract with Dallas ISD.*

Required Signature. The undersigned authorized agent agrees that he/she has read and understands the Small Business Office Compliance Guidelines and Forms and that all information is correct to the best of his/her knowledge.

Authorized Agent's Signature (Sign below)	**Date:**
X	

Construction Manager-At-Risk (CMAR) | Part 1

Company Name: _____ **Proposal No.:** _____

Section 1. M/WBE Compliance Reporting |B2G Now

The Small Business Office has adopted the usage of B2G Now, a diversity management and contract compliance system to assist with the management of the monthly compliance reporting requirement. Identify a primary point of contact to oversee your company's M/WBE report submissions. Refer to Section 11 on Page 12.

*M/WBE Point of Contact:	
Phone:	
Email:	

**The M/WBE point of contact should be knowledgeable regarding M/WBE utilization on the project.*

Section 2. Joint Venture (JV)

Is your company bidding as a Joint Venture (JV) with a certified M/WBE company?
Refer to Section 12 on Page 13 for additional information.

☐ **Yes.** If "**Yes**," identify all partners (including your company*) below and attach a signed, dated, and notarized Dallas ISD Master JV Agreement. Each JV partner (excluding your company) must complete Sections A through D on Page 3.

☐ **No.**

Joint Venture Majority Partner*	
Company:	Contact Person:
Email:	Phone:
JV % Split:	

Joint Venture Partner		
Company:	Contact Person:	
Email:	Phone:	
M/WBE Certification Agency:		
M/WBE Certification Number:		
Ethnicity:	Gender:	JV % Split:

Section 3. Prime-Subcontractor Team

Is your company bidding as a Prime-Subcontractor Team with a certified M/WBE company?
Refer to Section 14 on Page 14 for additional information.

☐ **Yes.** If "**Yes**," identify the certified M/WBE company below. Attach the signed, dated, notarized and required Dallas ISD Master Prime-Subcontractor Teaming Agreement.

☐ **No.**

M/WBE Company	M/WBE Certification Agency	M/WBE Certification Number	Ethnicity/Gender

Company Name: _____ **Proposal No.:** _____

COMPLETE SECTIONS A THROUGH D FOR YOUR COMPANY AND JOINT VENTURE PARTNER(S). USE ONE PAGE PER ENTITY

Section A. Diversity Plans

Does your company have an Affirmative Action, Equal Employment Opportunity or Supplier Diversity Plans?

☐ **Yes.** If "**Yes**," attach a copy of your plan immediately following the Small Business Office Compliance Guidelines & Forms.

☐ **No.**

Section B. Workforce Composition

Employee Category	African American		Asian		Hispanic		Native American		Non-Minority			Total Employees	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		Male	Female
Executive & Managerial													
Technical & Skilled													
Office & Clerical													
Other													
TOTAL													

Section C. M/WBE References

List two (2) M/WBE companies that have performed work for your company.

Company Name:	
Contact Person:	
Email:	
Phone Number:	
Project Name:	

Company Name:	
Contact Person:	
Email:	
Phone Number:	
Project Name:	

Section D. Mentor Protégé Program

Does your company currently participate in a Mentor Protégé Program, as a mentor to an M/WBE company? Refer to Section 16 on Page 15 for additional information.

☐ **Yes.** If **"Yes,"** attach a signed, dated and notarized copy of the Mentor Protégé Agreement and notarized minutes.

☐ **No.**

Company Name:_____ **Proposal No.:** _____

Section 4. Commitment to M/WBE Subcontractor Participation

Will you use any subcontractors, sub consultants, suppliers (M/WBE and/or Non-M/WBE) as part of this bid/proposal?

☐ **Yes**. I plan to utilize subcontractors as part of this bid/proposal. Refer to Section 6 on Page 7.

☐ **No.**

If Yes. Attach your company's written and detailed **M/WBE Compliance Plan** to be implemented in a good faith effort to reach the M/WBE goal. Such plan may include but not be limited to the following: resume and/or biography of person responsible for M/WBE implementation, your company's communication and outreach initiatives, mediation and dispute resolution procedures, training, workshops, business development and capacity building initiatives, strategies to break down contracts into economically feasible units, steps the company will take to achieve its' stated M/WBE commitment, favorable contract terms such as expedited pay and retainage, etc. Refer to Section 17 on Page 15 for additional information.

Will you self-perform a portion of the scope of work?

☐ **Yes.** I plan to self-perform a portion scope of work with my own workforce. Refer to Section 5 on Page 7.

☐ **No.**

Will you self-perform the entire scope of work?

☐ **Yes.** I plan to self-perform the entire scope of work with my own workforce. Refer to Section 5 on Page 7.

☐ **No.**

Construction Manager-At-Risk (CMAR) Part 2

During part 2 of the Construction Manager-At-Risk (CMAR) submission, the contractor will be required to complete the below documents, if applicable. The following information should be submitted with each contract amendment to the district. This information will explain the overall M/WBE self-performing prime (Section 5 on Page 7) and/or subcontractor utilization (Section 6 on Page 7). A completed, signed, and dated letter of intent (Section 8 on Page 9) should be submitted for each M/WBE subcontractor. All district prime vendors are required to demonstrate positive and reasonable good faith efforts to subcontract with M/WBEs. If you will not utilize M/WBE subcontractors, complete the Good Faith Effort Information (Section 7 on Page 9). Submit the required information to the Dallas ISD Small Business Office (SBO) 972.925.4140 for approval.

☐ **Small Business Office Compliance Guidelines and Forms Coversheet**

☐ **Certified M/WBE Prime Self-Performance**

☐ **Subcontractor Utilization**

☐ **Good Faith Effort**

☐ **Letter of Intent**

DALLAS INDEPENDENT SCHOOL DISTRICT

Small Business Office

Construction Manager-At-Risk
Part 2 - Coversheet

This form should be completed and signed by the Prime Vendor/Construction Manager.

Proposal Title:		**Proposal Number:**	
Contract Total:	**$**		

Company Information					
Company Name:		**Tax ID#**			
Company Address:					
City:		**State:**		**Zip:**	

Is your Company a Certified Minority or Woman Owned Business (M/WBE)?	☐ **Yes**	If "**Yes**," include your current certification, ethnicity and gender information below. For a list of Dallas ISD Recognized M/WBE Certification Agencies, Refer to Section 10 on Page 12.
	☐ **No**	If "**No**," indicate your ethnicity & gender below.

Certification Information			
M/WBE Certification Agency	**M/WBE Certification Number**	**Ethnicity**	**Gender**

Authorized Agent's Information	
***Authorized Agent's Name:**	
Authorized Agent's Phone:	
Authorized Agent's Email:	

***** *Authorized Agent is a person who has the authority to enter into a legally binding contract with Dallas ISD.*

Required Signature. The undersigned authorized agent agrees that he/she has read and understands the Small Business Office Compliance Guidelines and Forms and that all information is correct to the best of his/her knowledge.

Authorized Agent's Signature (Sign below)	**Date:**
X	

Company Name:_____ **Proposal No.:** _____

Section 5. Certified M/WBE Prime Self-Performance

Certified M/WBE Prime Self-Performance

Complete the Certified M/WBE Prime Self-Performance chart below, if you are a Certified M/WBE Prime and will self-perform with your own workforce the management of the project. The M/WBE prime must be economically independent, perform commercially useful functions (refer to Section 19 on Page 16) and perform the management of the project or the specialty trade work, consistent with industry practices, with its own workforce. The work should be consistent with industry standards. The M/WBE Prime's self-performance of a specialty trade or project scope of work shall be counted toward the goal, up to a maximum of 50% of the M/WBE project goal. Refer to Section 20 on Page 16 for additional information.

Certified M/WBE Prime Self-Performance			
Certified M/WBE Prime Company's Name:		Contract Amount	M/WBE %
Contact Person:			
Ethnicity:	Gender:		
Scope of Work:			

Section 6. Subcontractor Utilization

List all (minority and non-minority) subcontractors, suppliers, sub consultants, or sole proprietors that will be utilized in this bid/proposal. Only Certified M/WBE Prime Self-Performance and Certified M/WBE Subcontractors, performing a commercially useful function (refer to Section 19 on Page 16), will be counted towards the M/WBE goals. If you will not utilize M/WBE subcontractors, complete Section 7 on Page 9. For information on the change of subcontractor policy refer to Section 21 on Page 17. **Non-certified M/WBE companies will not be counted towards the goal.**

Subcontractor/Supplier Information			
Subcontractor/Supplier Company's Name:		Contract Amount	M/WBE %
Address: City: State: Zip:			
Contact Person:			
Ethnicity:	Gender:		
Phone:	Email:		
M/WBE Certification Agency:	Certification #:		
Scope of Work:			

Subcontractor/Supplier Company's Name:		Contract Amount	M/WBE %
Address: City: State: Zip:			
Contact Person:			
Ethnicity:	Gender:		
Phone:	Email:		
M/WBE Certification Agency:	Certification #:		
Scope of Work:			

Additional Subcontractor/Supplier Information on the following page

Company Name: _____ **Proposal No.:** _____

Subcontractor/Supplier Information Continued

Subcontractor/Supplier Company's Name:				Contract Amount	M/WBE %
Address:	City:	State:	Zip:		
Contact Person:					
Ethnicity:	Gender:				
Phone:	Email:				
M/WBE Certification Agency:	Certification #:				
Scope of Work:					

Subcontractor/Supplier Company's Name:				Contract Amount	M/WBE %
Address:	City:	State:	Zip:		
Contact Person:					
Ethnicity:	Gender:				
Phone:	Email:				
M/WBE Certification Agency:	Certification #:				
Scope of Work:					

Subcontractor/Supplier Company's Name:				Contract Amount	M/WBE %
Address:	City:	State:	Zip:		
Contact Person:					
Ethnicity:	Gender:				
Phone:	Email:				
M/WBE Certification Agency:	Certification #:				
Scope of Work:					

Subcontractor/Supplier Company's Name:				Contract Amount	M/WBE %
Address:	City:	State:	Zip:		
Contact Person:					
Ethnicity:	Gender:				
Phone:	Email:				
M/WBE Certification Agency:	Certification #:				
Scope of Work:					

Subcontractor/Supplier Company's Name:				Contract Amount	M/WBE %
Address:	City:	State:	Zip:		
Contact Person:					
Ethnicity:	Gender:				
Phone:	Email:				
M/WBE Certification Agency:	Certification #:				
Scope of Work:					

			Total:		

If you have additional subcontractors/suppliers, make copies of this form.

M/WBE Department's Office Use Only			
Contract Amount	**M/WBE Contract Total**	**M/WBE Percentage**	**M/WBE Coordinator**

Construction Manager-At-Risk Part 2 |To Be Submitted at Guaranteed Maximum Price (GMP) to the District

Company Name:_____ **Proposal No.:** _____

Certified M/WBE Subcontractor Performance. The M/WBE subcontractors, suppliers, and/or vendors must be 1st, 2nd or 3rd tier subcontractors, suppliers, and/or vendors when calculating participation. In order to prevent double counting, the district will count the M/WBE subcontractor participation for the 1st tier firm. If the 1st tier isn't a certified M/WBE, the district will count the 2nd tier M/WBE subcontractor. If the 1st and 2nd tier aren't certified M/WBEs, the district will count the 3rd tier M/WBE subcontractor. The expenditures by M/WBEs for materials or supplies toward M/WBE goals are calculated as follows:

	Type	M/WBE Percentage	Definition
A.	M/WBE Manufacturer	100%	Operates or maintains a factory or establishment that produces on the premises; the materials, supplies, articles, or equipment required under the contract.
B.	M/WBE Regular Dealer	60%	Owns, operates, or maintains a store, warehouse, in which the materials, supplies, articles or equipment are kept in stock, and regularly sold or leased to the public.
C.	M/WBE Representatives	Amount of Commission or Fees	Packagers, brokers, manufacturers' representatives

Section 7. Good Faith Effort

All district prime vendors are required to demonstrate positive and reasonable good faith efforts to subcontract with M/WBEs.
Complete this section if only non-M/WBE subcontractors will be utilized.

	Yes	No
1. Was contact made with M/WBEs by telephone or written correspondence at least one week before the bid was due to determine whether any M/WBEs were interested in subcontracting and/or joint ventures?	☐	☐
2. Were contracts broken down to provide opportunities for subcontracting?	☐	☐
3. Was your company represented at a pre-bid/proposal conference to discuss, among other matters, M/WBE participation opportunities and obtain a list (not more than two months old) of certified M/WBEs?	☐	☐
4. Was information provided to M/WBEs including, but not limited to bonding, lines of credit, technical assistance, insurance, scope of work, plans/specifications?	☐	☐
5. Were subcontracting opportunities advertised in general circulation, trade associations, M/WBE focused media and/or minority chambers of commerce?	☐	☐
6. Did you encourage non-certified M/WBEs to pursue certification status?	☐	☐
7. Were negotiations conducted in good faith with interested M/WBEs?	☐	☐
8. Were the services utilized of available minority and women, community organizations, contractor groups, local, state, and federal business assistance offices, and other organizations that provide assistance in the identification of M/WBEs?	☐	☐

Special Note: The good faith efforts documentation is subject to a Small Business Office audit.
Upon request, you will be required to provide supporting documentation for the purpose of verifying your good faith efforts.

Company Name:_____ **Bid/RFP No.:** _____

Section 8. Letter of Intent (LOI)

To be submitted at the contract negotiation meeting with the district, or as requested by the Small Business Office. Complete one LOI form for each proposed M/WBE subcontractor.

Org/School: _____

Prime Vendors must submit a Letter of Intent for each M/WBE Subcontractor who will be utilized to supply any services, labor or materials pursuant to the bid/proposal. If necessary, make copies.

This Letter of Intent is submitted to confirm the intent of the prime vendor and subcontractor to conduct good faith negotiations toward a subcontract agreement, with terms agreeable to both parties, for the scope of work identified herein. The parties acknowledge that any obligation of the prime vendor to enter into a subcontract agreement with subcontractor is expressly contingent upon the prime vendor entering into a contract with Dallas ISD for the work as defined in the bid/proposal.

This document must be completed in its entirety by the Prime Vendor and signed by both the Prime Vendor and the M/WBE Subcontractor.

Any false statements or misrepresentations regarding information submitted on this form may be a criminal offense in violation of Section 37.10 of the Texas Penal Code.

A. M/WBE Subcontractor's Information:

The M/WBE subcontractor _____ has been certified by a Dallas ISD recognized certification agency.

Name of Certifying Agency: _____ Certification #: _____ Ethnicity/Gender: _____
Print or Type Certification Agency's Name

Pursuant to Board Policy (CH Local), only M/WBEs who are currently certified may be counted towards meeting the district's M/WBE goal at the subcontracting level. See Section 13 on Page 10 for a listing of the Dallas ISD recognized certifying agencies.

The M/WBE Subcontractor is prepared to perform the following services, labor, or materials listed in connection with the project:

Scope of Work: _____

Price: $ _____

M/WBE Subcontractor Signature Required
Review the above information for accuracy prior to signing this Letter of Intent.

	X	
Print or Type Name and Title of M/WBE Owner, President or Authorized Agent	**Signature**	**Date**

B. Prime Vendor's Information:

Contact Person: _____ Company Name: _____

Address, City, State & Zip: _____

Declaration of Prime Vendor/Declarant:

I _____ HEREBY DECLARE AND AFFIRM that I am the _____
Name of Declarant (Print or Type) Title of Declarant (Print or Type)

and am duly authorized to make this declaration on behalf of _____
Company Name (Print or Type)

and that I have personally reviewed this Letter of Intent. To the best of my knowledge, information and belief, the facts and representations contained in this form are true and correct. The owner, president or authorized agent of the M/WBE firm signed this form, and no material facts have been omitted.

Prime Vendor/Declarant Signature Required
Review the above information for accuracy prior to signing this Letter of Intent.

	X	
Print or Type Name	**Signature**	**Date**

General Information regarding the Small Business Compliance Guidelines and Forms

It is a continuing goal of the district to involve Small Businesses, in a legal and meaningful way, in all facets of the district's contracting and purchasing activities. The Small Business Office (SBO) is responsible to ensure compliance with the district's M/WBE Program, Policy and Administrative Procedures. It's the contractors' responsibility to be aware and in compliance with all local, state and federal regulations and requirements related to M/WBE programs.

The district's aspirational M/WBE goal is **30%** for goods, services, and construction contracts. The district's aspirational M/WBE goal for bond funded professional service contracts is **35%**. The district may assign a contract specific M/WBE goal. Review your solicitation documents to determine which M/WBE goal will apply. The established M/WBE goal is applicable to any change orders, additional services, modifications or revisions to the original contract.

All Contractors are charged with knowledge of and are solely responsible for complying with the Small Business Office policies in submitting a response to the district. If awarded a contract, all contractors are responsible for performing the work described in the contract documents. The Contractor shall appoint a high-level official or knowledgeable consultant to administer and coordinate the Contractor's efforts to carry out its' M/WBE contractual commitments.

The Contractor has a continuing obligation as a covenant of performance to meet the M/WBE utilization to which it committed at Contract award and submission of Guaranteed Maximum Price, inclusive of change orders, amendments, and modifications. The failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the M/WBE Program requirements will constitute a material breach of the Contract entitling the district to exercise any remedy available in this Contract, the program requirements or applicable law. In addition, the failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements may be considered and have a negative impact on future contract award.

Section 9. Small Business Office Evaluation Scoring Criteria

Small Business Office Forms. Submit the completed, signed, and dated Small Business Office Compliance Guidelines & Forms by the due date. Include all M/WBE supporting documentation including, but not limited to M/WBE Certificates, Affirmative Action, Equal Employment Opportunity or Supplier Diversity Plan, signed, dated and notarized Joint Venture Agreement, Mentor Protégé Agreement and Minutes, or Prime-Subcontractor Teaming Agreement. Each proposal will be evaluated independently against other proposals.

Small Business Office Scoring Criteria. The district's Small Business Office Evaluation Scoring Criteria has been established as follows:

	Small Business Office Scoring Criteria	Maximum Point Allocation
A.	Proposer demonstrated a commitment to the district's Small Business Office by providing enhancements to the administration of the proposer's contracting process for the work to be done by M/WBE firms. *Examples of this commitment may include any of the following: expedited payments, Mentor Protégé Programs, early release of retainage, expanding the pool of diverse subcontractors to firms that have not done business with the district, etc.*	3
B.	Proposer submitted a list of two (2) M/WBE subcontractor references.	2
C.	Proposer is a certified M/WBE **OR** Proposer submitted a Joint Venture Agreement with a certified M/WBE **OR** Proposer submitted a Prime Subcontractor Teaming Agreement with a certified M/WBE.	5
D.	Proposer submitted a diverse list of certified M/WBE subcontractors, subconsultants or suppliers that meets or exceeds the district's M/WBE aspirational goal in meaningful and significant roles **OR** Proposer demonstrated outreach designed to meet the M/WBE project goals with a diverse M/WBE team of subcontractors, suppliers and subconsultants.	5
E.	Proposer demonstrated a comprehensive framework and understanding of the district's Small Business Office by: providing a written and detailed M/WBE compliance plan, designating a high ranking individual or knowledgeable consultant who will be responsible for M/WBE contract compliance, monitoring and reporting, ensuring no unauthorized changes to M/WBE subcontractors, adhering to the M/WBE commitment and subcontractor payment terms, executing the M/WBE subcontracting schedule, complying with the district's Small Business Office Program guidelines, etc.	5
	Total Points	**20**

Section 10. Recognized Certifying Agencies

The district accepts M/WBE certifications issued by:

North Central Texas Regional Certification Agency (NCTRCA)
D/FW Minority Supplier Development Council (DFW MSDC)
Department of Transportation (DOT)
City of Houston
City of Austin
National Minority Supplier Development Council (NMSDC)
State of Texas' Historically Underutilized Business (HUB)
Women's Business Council Southwest (WBC SW)
South Central Texas Regional Certification Agency (SCTRCA)
Corpus Christi Regional Transportation Authority
Small Business Administration (SBA 8A) or certified SDB
National Women's Business Enterprise Certification (WBENC)

Other certifications may be considered on an individual basis. Only certified minority and women-owned companies will be counted towards the prime's M/WBE subcontracting goals. Vendors do not have to be a certified M/WBE to participate in the district's contracting and purchasing activities.

Section 11. Diversity Management System

The Contractor is responsible for ensuring its employees who are processing payment requests on its company's behalf are trained on the district's Diversity Management System. This includes all subcontractors who the Contractor will be utilizing on the contract and will be verifying reported sub payments online.

Section 12. Joint Venture Program Information

The objective of the district's Joint Venture (JV) Program is to further the development, growth, and capabilities of minority and women-owned businesses that allow such businesses to offer the district the best combination of performance, cost, and delivery of service. A JV is an association of 2 or more companies with a certified minority or woman-owned business to form a new company. The Joint Venture parties are required to utilize the Dallas ISD Master Joint Venture Agreement. The agreement must be signed, dated and notarized by all Joint Venture parties. The Joint Venture does not replace a prime contractor's responsibility to satisfy applicable Small Business Office requirements, including M/WBE goals.

Companies seeking to participate in a Joint Venture arrangement has the burden of demonstrating to the district, by a preponderance of the evidence, that it meets the requirements of Board Policy (CH) Local with respect to being an eligible Joint Venture for counting purposes. The district will analyze whether the stated Joint Venture is realistic considering the number of employees, experience, resources, certification type, and other resources that each party provides to the Joint Venture. The Joint Venture Partnership must include a certified M/WBE Partner, based on the percentage allocated, who is able to adequately bond the project, have the experience and resource to perform the services, labor or material listed. Failure to adhere to the terms and conditions outlined within the Dallas ISD Master Joint Venture Agreement may deem your Joint Venture response as non-responsive and result in a non-point award during evaluation.

The Joint Venture Partner(s) may provide co-surety bond or bonds in proportionate percentage to their ownership in the Joint Venture and to other parties are applicable in a form acceptable to the owner. The Joint Venture may also provide in a form acceptable to the owner any bond or bonds in the name of the Joint Venture in lieu of the co-surety arrangement; provide an Up Front Joint Agreement (SAA Form #1), and an executed copy of the indemnity agreement signed by all of the parties associated with the SAA Form #1.

A separate bank account in the name of the Joint Venture must be established by the Joint Venture. The bank account will require the signature of an authorized representative of each party or his or her designee for withdrawal by check or documented approval of an authorized representative for withdrawal by electronic means.

Refer to the district's website at www.dallasisd.org/sbo for the required Dallas ISD Master Joint Venture Agreement and Joint Venture Guidelines.

Section 13. Construction M/WBE Joint Venture Scoring Analysis

The Joint Venture (JV) Agreement will be evaluated based upon the below referenced criteria. One of the JV partners must be a certified minority or woman-owned business. There is a maximum of 5 numerical points available. Refer to Section 12 on Page 13 for additional information.

The proposer must submit an approved, signed, dated, and notarized Dallas ISD Master Joint Venture Agreement. Any modifications to the Dallas ISD Master Joint Venture Agreement and amendments must be submitted for review with the proposal and include highlighted proposed changes or modifications to the agreement for review and approval of Dallas ISD's Small Business Office.

A.	M/WBE Joint Venture Partner	Points
Does it identify the distinct, clearly defined portion of the work provided by each M/WBE joint venture partner, in significant and meaningful ways? The work must be separate, clear and distinguishable. Specify the nature of the work and what it will entail. Complete exhibit A of the Dallas ISD Master Joint Venture Agreement.		3.00
B.	**Staffing Plan**	
Does it provide a staffing plan to be determined per the established participation percentages indicating the number of employees to be provided by each M/WBE joint venture partner? This should include a project organizational chart and a resumé for each key personnel that includes length of employment, time serviced in their role(s), and experience within the industry. Complete exhibit B of the Dallas ISD Master Joint Venture Agreement.		1.00
C.	**Financial and Bonding Information**	
Does it provide a letter from a financial institution or bonding surety company, substantiating the financial strength or bonding capacity of each M/WBE joint venture partner(s)? This document should commensurate each M/WBE joint venture partner(s) percentage split. Complete exhibit C of the Dallas ISD Master Joint Venture Agreement.		1.00
Total Points		**5.00**

Section 14. Prime-Subcontractor Teaming Program Information

The CMAR Prime-Subcontractor Teaming Program objective is to further the development, growth, and capabilities of minority and women-owned businesses that allow such businesses to offer the district the best combination of performance, cost, and delivery of service. A Prime-Subcontractor Team is a Vertical Teaming Arrangement wherein a prime firm enters into a binding agreement with a major subcontractor or minor prime contractor/vendor to pursue opportunities. The Vertical Teaming Arrangement does not replace a prime contractor's responsibility to satisfy applicable M/WBE program requirements, including sharing prime level responsibilities with their Teaming partner and any contract specific goals. Companies must submit the required Dallas ISD Master Prime-Subcontractor Teaming Agreement. Article 20 of the agreement provides details regarding Compensation, Related Costs and Best Value Subcontractor Awards.

Section 15. Prime-Subcontractor Team Scoring Analysis

The CMAR Prime-Subcontractor Teaming Agreement will be evaluated based upon the below referenced criteria. The designated subcontractor in this agreement must be a certified M/WBE. Attach the signed, dated, notarized and required Dallas ISD Master Prime-Subcontractor Teaming Agreement. There is a maximum of 5 numerical points available.

Proposer submitted a teaming arrangement and/or strategic partnership with subprime contracting with a certified MWBE firm(s). The certified MWBE firm(s) provides prime management, control and supervision of a clear and distinct portion of the specialty trade(s) or project scope of work in a meaningful and significant role(s). Proposer will establish a teaming agreement which defines the minimum M/WBE subcontractor commitment. The teaming agreement defines what trade(s) the subcontractor will perform, and the subcontractor is certified in the respective subcontracting scope.

	Teaming Agreement Scoring Analysis	Points
A.	Does the teaming agreement provide the certified M/WBE firm(s) with prime management, control and supervision of a clear and distinct portion of the project scope of work in meaningful and significant roles?	3.00
B.	Does the teaming agreement provide a pre-negotiated, signed and dated subcontract form as an exhibit? Specify the payment and release of retainage terms.	1.00
C.	Does it provide a letter from a financial institution or bonding surety company, substantiating the financial strength or bonding capacity of each certified M/WBE subcontractor teaming partner(s)? Complete exhibit C of the Dallas ISD Prime Subcontractor Teaming Agreement.	1.00
	Total	**5.00**

Section 16. Mentor Protégé Program Information

The Small Business Office's Mentor-Protégé program aims to stimulate the growth of minority and women-owned businesses through education, business development, and training. A mentor should be willing to advise and support the protégé and help identify the needs and skills of the protégé. The Mentor Protégé Agreement, meeting minutes, progress reports, and deliverables should be signed by all parties, dated, and notarized.

Section 17. M/WBE Compliance Plan

Provide a written and detailed **M/WBE Compliance Plan**. At a minimum, a proposed M/WBE Compliance Plan should include but not be limited to the following:

- Comply with the Small Business Office Policy and Administrative Procedures, including affirming that the Small Business Office shall have prompt, full and complete access to all Contractor and Subcontractor personnel, books and records required to monitor and assure performance of the approved Compliance Plan;
- Provide the name and contact information of the high-level official to administer and coordinate the Contractor's efforts to carry out its' M/WBE contractual commitments;
- Acknowledge the district's right to withhold payment in the event of non-compliance, until such issues are resolved;
- Provide a detailed plan for community outreach, communication, M/WBE capacity building and business development;
- Describe how the Contractor will divide the work into economically feasible units to enhance M/WBE opportunities;
- Describe in detail how the Contractor will make good faith efforts to maintain its' M/WBE commitment.
- Provide a resume and/or biography of the person responsible for M/WBE Program implementation.
- Provide your company's mediation and dispute resolution procedures;
- Provide a detailed methodology for issuance of notice(s) of any non-compliance and a reasonable opportunity to cure;
- Identify any favorable contract terms, such as expedited pay, expedited retainage.

Section 18. Payment

The Prime vendor shall submit an Small Business Office Pay Activity Report (PAR) indicating the amounts paid (along with required proof of payments) to its subcontractors with each pay application or as requested by the district.

- Acceptable proof of payments includes: (1) Emails from the Subcontractor verifying the payment amount, date paid, school name and/or org #, and project information (2) Partial Lien Releases, (3) Cancelled Checks, or (4) Proof of Electronic Funds Transfer;
- All Prime vendors must pay all submitted invoices, including retainage to subcontractors, suppliers, or entities within **10 days** of receiving payment from the district;
- No Prime vendor shall withhold a non-disputed subcontractor payment;
- No Prime vendor may withhold retainage greater than 5% from the subcontractor.

DALLAS INDEPENDENT SCHOOL DISTRICT | Small Business Office

Construction Manager At-Risk (CMAR)
To Be Submitted with Part 2

Section 19. Commercially Useful Function

An M/WBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an M/WBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing. An M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation.

Section 20. Certified M/WBE Prime Self-Performance

- The M/WBE prime must be a bona fide business with real and continuing ownership for more than a year prior to the solicitation and was not created merely for the purpose of meeting this evaluation criteria.
- The M/WBE prime must be certified at the time of submission of the proposal.
- The M/WBE prime must be economically independent and perform commercially useful functions and must perform the management of the project or the specialty trade work, consistent with industry practices, with its own workforce.
- The M/WBE's self-performance of a specialty trade or project scope of work shall be counted toward the goal, up to a maximum of 50% of the M/WBE project goal.

  For example, an M/WBE prime elects to self-perform the interior finish out painting which equals 10% of the project's total costs and the goal for the project is 30%. The M/WBE prime's participation will count 10% toward the M/WBE project goal of 30%. The remaining M/WBE subcontracting goal after applying the MWBE prime's self-performance on the project is a 20% M/WBE subcontracting goal.

- If the M/WBE prime's self- performance exceeds the M/WBE contract goal, a maximum of 50% of the M/WBE project goal will be applied toward the goal.

  For example, the M/WBE prime self-performs the concrete work for the project and the concrete work is 30% of the total project costs. The MWBE prime's participation will count 15% toward the M/WBE project goal of 30%. The remaining M/WBE subcontracting goal after applying the M/WBE prime's self- performance on the project is a 15% MWBE subcontracting goal.

Section 21. At Guaranteed Maximum Price (GMP) Submission to the District

Schedule of Subcontractors. Complete (Section 6 on Page 7) for the subcontractors you plan to utilize. Attach a copy of the current M/WBE certificate or proof of M/WBE certification for each M/WBE subcontractor.

Changes to the List of Subcontractors. A Request for Approval of Contract Change form must be submitted to Small Business Office for approval prior to any changes to the M/WBE subcontractor utilization listing in Section 6 on Page 7. A written justification and supporting documentation are required from the prime requesting the change. This applies after Bid/RFP submission and throughout the contract duration.

Letter of Intent. The awarded prime vendor who will subcontract portions of the work must obtain the *Letter of Intent to Perform/Contract as an M/WBE Subcontractor* form (Section 8 on Page 10) for each proposed M/WBE subcontractor.

Section 22. Changes to the Original M/WBE Commitment – After (GMP) Submission and throughout the Contract

The prime vendor shall notify the Small Business Office if the percentage of M/WBE participation falls below the level of participation represented in the contract. The prime vendor shall promptly notify the Small Business Office within 7 days and obtain a listing of other certified M/WBE vendors to meet the commitment amount. This applies after GMP submission and throughout the contract duration.

Section 23. Contract Execution between Prime Vendor and Subcontractor

Prime vendor agrees to establish a written contract with each subcontractor. At minimum, the contract should include the scope of work, payment terms, prompt payment clause and retainage clause.

Section 24. Records Retention

The Contractor will be required to maintain records showing the awarded contracts, subcontractor payment history, efforts to identify and award contracts to M/WBEs, and copies of executed contracts with M/WBEs. The Contractor must provide access to books, records and accounts to authorized district, state and federal officials. District contracts are subject to an M/WBE audit.

EXHIBIT A – INTENTION TO PROPOSE FORM

Please return this Intention to Propose Form within **Five (5) Days** of receipt of this Request for Proposal Package. Doing so will enable us to keep a record of interest in this project. It is your responsibility to continue to monitor the District Website for any modifications or addenda issued prior to the submittal deadline. Email this form to:

ATTN: **Dallas ISD Procurement Services c/o Bond/Construction Services**
Linus D. Wright Dallas ISD Administration Building
9400 North Central Expressway, Suite 800
Dallas, TX 75231
E-mail: ProcurementCS@dallasisd.org

Subject: Dallas ISD Construction Services
RFP # 208053 – Career Institute East – Historic Lincoln Building - Renovation

Dear **Procurement Services:**

We hereby acknowledge receipt of the proposal documents for the above-referenced Request for Proposals (RFP) Package, and confirm that:

(Check appropriate box)

☐ We do intend to submit a proposal for this work. We understand that this proposal will be prepared by us at no cost or obligation to: Corgan or Dallas ISD.

☐ We do not intend to submit a proposal on this work. The reason(s) we decline to offer a proposal is as follows:

_____

_____

_____

Yours sincerely,

_____ _____
Name Signature

_____ _____
Firm Title

_____ _____
Phone Date

_____
Fax

_____
Email Address