

# DRAFT AIA® Document A104™ – 2017

## Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the «Seventeenth (17)» day of «November» in the year «2025»  
(In words, indicate day, month and year.)

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

Tomball Independent School District  
310 S. Cherry St  
Tomball, Texas  
« »

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

TBD  
XXXX  
XXXX

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

Tomball ISD  
West Campus  
#984-25 – New Flood Control Drainage Channel and other areas of work as defined within the bidding and construction documents.

The site entry point is approximately 1.5 miles south of the Juergen Rd/Mueschke Rd Intersection just south of S.H. 99 – The Grand Parkway, on the east side of Mueschke Rd. It can also be accessed from Juergen Rd. Final construction entrance to be established once mobilization begins.

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

Brooks & Sparks, Inc.  
21020 Park Row  
Katy, Texas 77449

The Owner and Contractor agree as follows.

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

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

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### ARTICLE 1 THE WORK OF THIS CONTRACT

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

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

*(Check one of the following boxes.)*

[ ☐ ]

[ ☐ ]

[ ☒ ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

«The date of commencement shall be the day that the Contractor receives a Notice to Proceed from the Owner. If a Building Permit is not available for the entire Project, the Contractor must commence work on those portions of the project that do not require a Building Permit on receipt of a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been fully executed by the Contractor and the Owner.»

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

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

### § 2.3 Substantial and Final Completion

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

(Check the appropriate box and complete the necessary information.)

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

[ ☒ ] During negotiation completion, a final date shall be established based upon 160 calendar days however this contract is for a specific date to be established as noted.

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

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

§ 2.3.4 Subject to adjustments of the Contract Time as provided in the Contract Documents, Final Completion shall be 30 calendar days after the date of Substantial Completion

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

[ ☒ ] Stipulated Sum, in accordance with Section 3.2 below

[ ☐ ] "Intentionally Deleted"

[ ☐ ] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below "Intentionally Deleted"

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be **"Five Million Dollars" (\$5,000,000.00)**, which includes a **"Owner Contingency Five Hundred Thousand Dollars (\$500,000.00)**, Owner Contingency, all subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

Item	Price
<b>Alternates:</b> As noted in the RFP if any.	\$0.00

§ 3.2.2 Unit prices, if any:

*(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable as defined on the Bid Form Attachment A.)*

Item	Units and Limitations	Quan.	Price per Unit (\$0.00)	Total Price
Refer to Exhibit C			\$	\$

§ 3.2.3 Allowances, if any, included in the stipulated sum:

*(Identify each allowance.)*

Item	Price
Owner's Contingency	\$500,000.00

§ 3.3 Intentionally Deleted I

§ 3.4 Intentionally Deleted I

§ 3.5 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

«The parties hereto agree that time is of the essence of this Contract, and that actual and direct damages would be suffered by the Owner if the Contractor does not substantially or finally complete all Work called for in the Contract Document by the specified dates. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. It is therefore expressly agreed, as a part of the consideration inducing the Owner to execute this Contract that the Owner may deduct from any payment(s) due to the Contractor a sum equal to Five Hundred Dollars (\$500.00) for each and every Calendar Day beyond the agreed date which the Contractor has agreed to for Substantial Completion or Final Completion of the Work included in the Contract Documents and all approved change orders including time. It is expressly understood that said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially or finally completed within the agreed time, or with the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only, and in no sense shall be considered a penalty or forfeiture; said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement. »

## ARTICLE 4 PAYMENT

### § 4.1 Progress Payments

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

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

« »

§ 4.1.3 Provided that an Application for Payment is received by the Owner's Representative not later than the «1<sup>st</sup>» day of a month, and certified by the Owner's Representative not later than the 15<sup>th</sup> day of a month, the Owner shall

make payment for the undisputed amount to the Contractor not later than the fifteen (15) days of receipt of the final approved certified Application for Payment by Owner. If an Application for Payment is received by the Owner's Representative after the date fixed above, payment for the undisputed amount shall be made by the Owner not later than «thirty » ( «30 » ) days after the Owner's Representative receives and certifies the Application for Payment, except that no payment shall be considered not paid when due or overdue except in accordance with the Texas Government Code Section 2251.021.

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

**§ 4.1.4** For each progress payment made prior to Final Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

«Five percent (5.0%) »

**§ 4.1.5** Payments due and unpaid under the Contract shall bear interest as established by Texas Government Code Chapter 2251.

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

- .1 Updated Microsoft Project schedule meeting the requirements of Section 3.10, and.
- .2 A log of weather days, including backup documentation.

## **§ 4.2 Final Payment**

**§ 4.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions, and liquidated damages, shall be paid by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment.
- .2 the Contractor has submitted a final accounting for the Cost of the Work.
- .3 all closeout documents are submitted and accepted by the Owner as final including but not limited to, all required notices, agency approvals and lien releases; and
- .4 a final Certificate for Payment has been issued by the Owner's Representative in accordance with Section 15.7.1.

**§ 4.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Owner's Representative final Certificate for Payment, Owner's Board's vote, or other required approval pursuant to applicable policy.

« »

## **ARTICLE 5 DISPUTE RESOLUTION**

### **§ 5.1 Binding Dispute Resolution**

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ ☐ » ] Arbitration pursuant to Section 21.6 of this Agreement

[ ☒ » ] Litigation in a court of competent jurisdiction

[ ☐ » ] Other (*Specify*)

« »

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

## ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

### § 6.1.2 Intentionally Deleted

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

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

### § 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Tomball ISD Juergen Rd – Site Paving and Utilities (RFP) #943-23 dated April 04, 2023  
Construction Specifications – Dated – (Final issued date to be determined after bidding and addenda are incorporated.)

Section	Title	Date	Pages
See Exhibit D -	Specification Sheet Index	04-04-2023	02

### § 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Tomball ISD West Campus HCFC Channel Extension (RFP) #984-25 dated September 22, 2025  
Construction Documents – Dated – (Final issued date to be determined after bidding and addenda are incorporated.)

Number	Title	Date
	Civil Drawings	

### § 6.1.6 The Addenda, if any:

Number	Date	Pages
Addendum #01		
Addendum #02		
Addendum #03		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

§ 6.1.7 Additional documents, if any, forming part of the Contract Documents:

.1 Other Exhibits:

(Check all boxes that apply.)

[ ☒ » ] Stipulated Sum Proposal including any accepted Alternates

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

**Document**

**Title**

**Date**

**Pages**

The RFP in its entirety with all Addenda

.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents.)

\*\*\*\*\***(FOR BID REFER TO RFP POSTED DOCUMENTS)**

Exhibit A, Insurance and Bonds

Exhibit B, Owner's Prevailing Wage Rate Schedule

Exhibit C, Contractors Proposal Form

Exhibit D, Specification Sheet Index

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. 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 Owner's Representative. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.1.1 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work.

§ 7.1.2 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. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with the Owner's interpretation.

### § 7.1.3 Intent of Drawings

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



**§ 7.1.3.2** All dimensions and field conditions shall be verified by field measurements. When called for in the contract documents, dimension verification shall be undertaken by a Licensed Surveyor in the State of Texas.

**§ 7.1.3.4** If Work is required in a manner which makes it impossible to produce the specified quality of Work, or should errors, omissions, or discrepancies exist in the Contract Documents, **the Contractor shall request in writing an interpretation before proceeding with Work.** If Contractor fails to make such a written request at least within 14 days of discovery of such issue, no excuse or claim will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and Specifications which should reasonably have been ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

**§ 7.1.5** All manufactured articles, materials, and equipment shall be incorporated into the Work in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

**§ 7.1.6 Relation of Specifications and Drawings:** The Drawings and specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, the proposals should be based on the most expensive combination of quality and quantity of work indicated. The appropriate method of performing the Work, in the event of the above mentioned disagreements, will be made by the Owner's Representative, in consultation with and subject to the approval of the Owner. The Work is to be furnished if shown on the Drawings and not in the Specifications or vice versa.

## **§ 7.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

## **§ 7.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **§ 7.4 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Owner's Representative and the Owner's Representative consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

## **§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service**

**§ 7.5.1** The Owner's Representative and the Owner's Representative consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will 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. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's Representative or Owner's Representative consultants' reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.



## **§ 7.6 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. 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.

## **§ 7.7 Building Information Models Use and Reliance**

If applicable, 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.

## **§ 7.8 Severability**

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.

## **§ 7.9 Notice**

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

**§ 7.9.2** Notice of Claims shall be provided in writing, made within 14 calendars of the event, and shall be deemed to have been duly served only if delivered to the designated representative, the Owner's Program Manager. Sufficient detail shall be provided to understand the claim. Where follow-up information is required, it shall be delivered within 14 calendar days of the request to the Owner's Program Manager.

## **§ 7.10 Relationship of the Parties**

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner's Representative and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; 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 and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

## **ARTICLE 8 OWNER**

### **§ 8.1 Information and Services Required of the Owner**

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

**§ 8.1.2** If requested in writing to do so by the Contractor prior to the start of the work, the Owner may, at the Owner's sole discretion, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY

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

**§ 8.1.3** Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor or that was caused by the Contractor's negligent conduct.

**§ 8.1.4** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which the Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

### **§ 8.2 Owner's Right to Stop the Work**

If the Contractor, after written notice and opportunity to cure, but in no event longer than ten (10) days, fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Work in accordance with the Contract Documents, the Owner may, at the Owner's discretion, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

### **§ 8.3 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any 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 Owner's Representative and the Owner's Representative may, pursuant to Section 15.4.3, 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 the Owner's expenses made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

### **§ 8.4 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 8.4.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**§ 8.4.2** The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## **ARTICLE 9 CONTRACTOR**

### **§ 9.1 Review of Contract Documents and Field Conditions by Contractor**

**§ 9.1.1** 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.

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, 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 Owner's Representative any errors, inconsistencies, or omissions discovered by or made

known to the Contractor as a request for information in such form as the Owner's Representative 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.

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

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** 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, unless the Contract Documents give other specific instructions concerning these matters.

**§ 9.2.2** 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.

## **§ 9.3 Labor and Materials**

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

**§ 9.3.2** 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 skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces, and all tiers of Sub-subcontractor's forces. 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, OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAWS OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

**§ 9.3.3** The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Owner's Representative and in accordance with a Modification.

- .1** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; and (iii) when, in the judgment of the Owner, a substitution would be in the Owner's best interests in terms of cost, time, or other considerations.
- .2** The Contractor must submit to the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified. Proposals for substitutions shall be submitted in triplicate to the Owner in sufficient time to allow the Owner no less than twenty-one (21) working days for review unless a shorter time is agreed upon in writing. No substitutions will be

considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

**§ 9.3.4** The Contractor will, before any duties are performed on Owner's property where students are regularly present, and at least annually thereafter, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor if the person has or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code. The Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee, agent or other person who was convicted of a felony under Title V of the Texas Penal Code or any offense that requires the person to register as a sex offender. No person shall be engaged by the Contractor or by any entities with which the Contractor contracts, including but not limited to any suppliers or subcontractors, to work on Owner's property where students are present who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

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

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

**§ 9.3.5 Identification of Employees.** Contractor is responsible for the "badging" of workers and employees on the jobsite for identification. Contractor shall furnish photo identifications of all workers and employees and ensure that all workers and employees are badged and identifiable at all time.

**§ 9.3.6 Prevailing Wages.** The Contractor and each subcontractor who performs any portion of the Work must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code. As required by Chapter 2258 of the Texas Government Code, Contractor and Contractor's Subcontractors shall pay all workers not less than the general prevailing rate of the per diem wages for work of a similar character where the Project is located, as detailed in the Owner's Prevailing Wage Rate Schedule included in Owner's competitive procurement solicitation documents, which is attached hereto and incorporated herein, and any applicable fringe benefits. Wages listed are minimum rates only. Contractor and all Subcontractors shall comply with all state and federal laws including, but not limited to, laws of labor, minimum wage, safety, and equal employment opportunity. The Contractor shall require all subcontractors to comply with the provisions of this Section.

**§ 9.3.7** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

## **§ 9.4 Warranty**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other 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 15.6.3.

## **§ 9.5 Taxes**

Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption for the State Sales Tax on tangible personal property and material incorporated in the project, provided that the Contractor fulfills the requirements of the Limited Sale, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from their suppliers and shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor hereby RELEASES, INDEMNIFIES AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Sub-Contractor to comply with the provisions of any or all such laws and regulations.

## **§ 9.6 Permits, Fees, Notices, and Compliance with Laws**

**§ 9.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

**§ 9.6.2** 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. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

## **§ 9.7 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. No allowances shall be included in the Contract Sum unless approved in writing. Where required, the Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be calculated as shown in Article 13. The inclusion of any Allowance or Contingency is solely for the benefit of the Owner. Expenditure of any Allowance or Contingency may only be made with prior written approval of the Owner and according to the procedures of Article 13.5.

## **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** The Contractor, promptly after being awarded the Contract, but prior to the first application for payment, shall submit for the Owner's review and approval a Contractor's construction schedule for the Work. The schedule shall be transmitted in the form of Microsoft Project in the native file format. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) predecessors and successors; (5) phases; (6) baseline start and stop dates; (7) actual start and stop dates; (8) current start and stop dates; (9) delays; (10) critical path; (11) submittals; (12) extensions of the Contract Time authorized by Changes, and (13) Owner activities. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and, upon such revision, shall be submitted to Owner for their review and approval. In no case will the schedule be updated less frequently than each application for payment. The Contractor's schedule may be considered when evaluating a request for additional time.

**§ 9.8.2** The Contractor shall promptly perform the Work in general accordance with the most recent schedule submitted to the Owner.

## **§ 9.9 Submittals**

**§ 9.9.1** The Contractor shall promptly review for compliance with the Contract Documents and submit to the Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Owner reasonable time for review.



By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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. The Work shall be in accordance with approved submittals.

**§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.**

**§ 9.9.3** 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

**§ 9.10 Use of Site**

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. It is recommended that the contractor photographically document existing conditions prior to the start of work.

**§ 9.11 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**§ 9.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project. Upon completion of the Work, Contractor shall provide final clean-up of all surfaces, without limitation, including but not limited to cleaning all surfaces, removing any adhesives and stickers, removing all trash and debris, and the like. If Contractor fails to clean up as provided in the Contract Documents, the Owner may clean up and the Owner shall be entitled to reimbursement from Contractor.

**§ 9.13 Access to Work**

The Contractor shall provide the Owner with access to the Work in preparation and progress wherever located. Contractor acknowledges that the Work may be performed in connection with an educational facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. When work occurs in existing facilities, Contractor understands and accepts the cost and schedule impacts associated with work in existing facilities and the potential delays and disruptions to the progress of the Work and has considered such delays and disruptions in the contract sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other Contractors and Subcontractors on the site, and shall take, and cause the

Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

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

#### **§ 9.14 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Owner's consultants harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner's Representative.

#### **§ 9.15 Indemnification**

**§ 9.15.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES (INCLUDING LOSS OF USE RESULTING THEREFROM), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THE CONTRACT, PROVIDED THAT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 9.15 SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT. THE CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, OR HOLD HARMLESS A PARTY OR PARTIES INDEMNIFIED HEREUNDER AGAINST ANY CLAIM CAUSED SOLELY BY (1) THE NEGLIGENCE OR FAULT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, (2) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OR (3) THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE INDEMNITY OBLIGATION SET FORTH HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 9.15.**

**§ 9.15.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, THE**



**CONTRACTOR'S AGENT, OR THE CONTRACTOR'S SUBCONTRACTOR OF ANY TIER, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR SUITS ARE BASED IN WHOLE OR IN PART UPON THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, ITS OFFICERS OR ITS EMPLOYEES. THE INDEMNITY REQUIRED BY THIS PARAGRAPH 9.15.2 IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 9.15.1.**

**§ 9.15.3** In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 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 workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 9.15.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN PART BY THE NEGLIGENCE OF OWNER OR ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 9.15.1.**

**§ 9.15.5** The Contractor agrees to waive any and all claims it may have against the Owner, connected with, resulting from, or arising out of, claims and suits covered by the indemnification agreement contained herein and agrees that any insurance policy provide for the waiver of subrogation rights against the Owner.

**§ 9.15.6** To the extent allowed by law, the Contractor agrees to ensure the indemnity and hold harmless clauses contained in this Section 9.15, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in this Agreement.

**§ 9.15.7** The provisions of Section 9.15, including all of its subparts, shall survive the termination of the Agreement or the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 9.15 and its subparts.

## **ARTICLE 10 OWNER'S REPRESENTATIVE**

**§ 10.1** The Owner's Representative will provide administration of the Contract as described in the Contract Documents and representative during construction, until the date the Owner's Representative issues the final Certificate for Payment. The Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 10.2** Duties, responsibilities, and limitations of authority of the Owner's Representative as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor. Consent shall not be unreasonably withheld.

**§ 10.3** The Owner's Representative will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Owner's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Representative will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 10.4** On the basis of the site visits, the Owner's Representative 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 Owner's Representative will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's Representative 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.

**§ 10.5** Based on the Owner's Representative's evaluations of the Work and of the Contractor's Applications for Payment, the Owner's Representative will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 10.6** The Owner's Representative has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

**§ 10.7** The Owner's Representative will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 10.8** The Owner's Representative will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner's Representative will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

**§ 10.9** The Owner's Representative decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### **ARTICLE 11 SUBCONTRACTORS**

**§ 11.1** 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.

**§ 11.2** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 11.3** Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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, which the Contractor, by the Contract Documents, assumes toward the Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

#### **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ 12.1** 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.

**§ 12.2** 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 activities with theirs as required by the Contract Documents.

**§ 12.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The

Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

## **ARTICLE 13 CHANGES IN THE WORK**

**§ 13.1** By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, and Contractor, or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

**§ 13.2** Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Owner will prepare a Change Order.

**§ 13.3** The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work.

**§ 13.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner promptly and before conditions are disturbed.

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

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

Description of Subcontractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Labor Costs (Direct only, no markup)
- D Labor Cost Markup (Benefits, employer taxes)
- E Equipment
- F Markup on Work performed by other than Subcontractor's own forces, which shall not exceed 10%
- G Contractor's Overhead and Profit, which shall not exceed 10% of A through F
- H Cost of the Work (Sum of A through G)

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

Description of Contractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours

- C Labor Costs (Direct only, no markup)
- D Labor Cost Markup (Benefits, employer taxes)
- E Equipment
- F Contractor's Overhead and Profit, which shall not exceed 10% of A through E
- G Cost of the Work (Sum of A through F)

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

**§ 13.6** The Contractor, upon receipt of written notification by the Owner or Engineer of a proposed item of change in the Work, the Contractor shall prepare within 10 calendar days a Change Proposal in such form or forms as directed by the Owner.

- .1 Each separate Change Proposal shall be numbered consecutively and shall include all cost related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractor's itemized accounting shall be included with the Change Proposal.
- .3 If a change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner's Representative and the Contractor.
- .4 A revised Change Proposal shall be the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.
- .5 Upon written approval of a Change Proposal by Owner, and the Contractor, the Owner's Representative will prepare an Allowance Expenditure Authorization or Change Order authorizing such change in the Work; and
- .6 The Contractor shall request extensions of Contract Time due to changes in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a Contract Time extension. Any request for extensions of Contract Time must be substantiated through the demonstration of the impact of the proposed item of change in the work to the critical path schedule for the project.
- .7 Drawings, specifications and RFI's showing the conflict shall be attached to each Change Proposal.

## ARTICLE 14 TIME

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

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

**§ 14.3** The following days are referenced in the documents:

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

**§ 14.3.2** Holidays: The days officially recognized by the construction industry in this area as a holiday; limited to the observance days of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day.

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

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

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

amount of Anticipated Adverse Weather Days from the total amount of approved Adverse Weather Days.

**§ 14.3.5.1** Further, Adverse Weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site:

1. Precipitation (rain, snow, or ice) in excess of twenty-five one hundredths of an inch (0.25”) liquid measure, hereafter referred to as Standard Baseline in a 24 hour period beginning at 12:00 am and ending at 11:59 PM.
2. Temperatures that do not rise above that required for the day’s construction activity if such temperature requirement is specified or accepted as standard industry practice.
3. Sustained wind in excess of twenty-five (25) m.p.h. where it can be shown to impact the work.
4. “dry-out” or “mud” days resulting from precipitation that occur beyond the standard baseline; only if there is a hindrance to site access or sitework and Contractor has taken all reasonable accommodations to avoid such hindrance; and, at a rate no greater than 1 make-up day for each approved lost day or consecutive days of precipitation beyond the Anticipated Adverse Weather Days that total 1.5 inches or more, liquid measure.
5. And when approved, adverse weather prevents work on the project for fifty percent (50%) or more of the Contractor’s scheduled work day and critical path construction activities were included in the day’s schedule, including a weekend day or holiday if Contractor has scheduled construction activity that day.

**§ 14.3.6** Net Weather Days: The difference in working days between Anticipated Adverse Weather Days and Adverse Weather Days.

**§ 14.4** The date of Substantial Completion is the date certified by the Owner in accordance with Section 15.6.3. Once a Substantial Completion date is set, the reference to “days” shall only apply to changes or allowed time extensions.

**§ 14.5** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) Owner changes ordered in the Work; (2) approved abnormal adverse weather conditions as defined in this agreement, unavoidable casualties, or any causes beyond the Contractor’s control when agreed to before the event; or (3) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine, subject to the provisions of Article 21.

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

**§ 14.7** Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the work, the date upon which each cause of delay ceased to affect the progress of the work and the number of days increase in the contract time claimed as a consequence of each such cause of delay. Additionally, any Claim for additional time based on adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Claims shall be made with 7 calendar days of the event. Weekly reporting of adverse weather is required to make a claim.

1. Weather data shall form the baseline for estimating anticipated delays and project durations and determining the occurrence of unusually severe weather.

a. Data in the table below is compiled from the number of days per month that the anticipated weather is expected to be adverse and has been used to establish the baseline of Anticipated Adverse Weather Days per month associated with the project schedule duration.

Anticipated Adverse Weather Days
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Month	Total of Weather Days Allowed
January	6
February	6
March	5
April	4
May	6
June	7
July	6
August	6
September	6
October	6
November	6
December	6

b. The Anticipated Adverse Weather Days shall be submitted within the Contractor's Construction Schedule for documenting future weather events and is considered to be part of the project duration forming the contract time.

## 2. Submission for Time Extension

- a. Although the Contractor is required to document the occurrence and effect of Adverse Weather on the work, it does not relieve the Contractor of its responsibility to investigate and determine if an excusable delay has occurred.
- b. The schedule of Anticipated Adverse Weather Days included in the Contract is established in Work Days. Similarly, actual weather data should be collected and recorded on a Work Day basis. Monthly summaries should be maintained indicating actual adverse weather conditions and the impact on work activities.
- c. To determine if any particular month experienced Adverse Weather Days, the number of actual Adverse Weather Days is compared to that as provided by the Anticipated Adverse Weather Days. If the number of Adverse Weather Days is greater than the Anticipated Adverse Weather Days, then the contractor has experienced unusually severe weather.
- d. THE DETERMINATION THAT UNUSUALLY SEVERE WEATHER OCCURRED DOES NOT AUTOMATICALLY MEAN THAT THE CONTRACTOR RECEIVES A TIME EXTENSION FOR THE DIFFERENCE OF DAYS BETWEEN THE ANTICIPATED AND ACTUAL ADVERSE WEATHER DELAY DAYS. Further analysis is necessary to determine if the unusually severe weather delayed work activities critical to contract completion. The Contractor's progress schedule must be evaluated to make this determination. If it is found that unusually severe weather delayed the contract, a Contract modification shall be issued.
- e. Claims for increase in the contract time shall set forth in writing the detail noting the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Owner's Representative in writing not later than with each Application for Payment and shall include documentation demonstrating the nature and duration of the delays or disruptions. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation.
- f. The parties agree that the reconciliation of the change attributable to Adverse Weather days will occur at the time of project final completion.

## **ARTICLE 15 PAYMENTS AND COMPLETION**

### **§ 15.1 Schedule of Values**

**§ 15.1.1** Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner's Representative before the first Application for Payment, allocating the entire Stipulated Sum or 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 Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. The Pay application values shall break out labor and materials for all major work.

**§ 15.1.2** The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### **§ 15.3 Applications for Payment**

**§ 15.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

### **§ 15.3.2 Intentionally Deleted**

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

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

Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment

**§ 15.3.4** 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 other encumbrances adverse to the Owner's interests.

### **§ 15.4 Certificates for Payment**

**§ 15.4.1** The Owner's Representative will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner's Representative determines is properly due, or notify the Contractor and Owner of the Owner's Representative reasons for withholding certification in whole or in part as provided in Section 15.4.3.

**§ 15.4.2** The issuance of a Certificate for Payment will constitute a representation to the Owner, based on the Owner's Representative evaluations of the Work and the data in the Application for Payment, that, to the best of the



Owner's Representative knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the 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 Owner's Representative. However, the issuance of a Certificate for Payment will not be a representation that the Owner's Representative has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 15.4.3** The Owner's Representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's Representative opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Owner's Representative is unable to certify payment in the amount of the Application, the Owner's Representative will notify the Contractor and Owner as provided in Section 15.4.1. If the Contractor and the Owner's Representative cannot agree on a revised amount, the Owner's Representative will promptly issue a Certificate for Payment for the amount for which the Owner's Representative is able to make such representations to the Owner. The Owner's Representative 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 Owner's Representative opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, 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.
- .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.

**§ 15.4.4** When either party disputes the Owner's Representative decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

### **§ 15.5 Progress Payments**

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

**§ 15.5.2** Neither the Owner shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

**§ 15.5.3** 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.

**§ 15.5.4** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 15.6 Substantial Completion**

**§ 15.6.1** 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 **including all work designated to become public ROW shall have met all HC Engineering requirements** that the Owner can occupy or utilize the Work for its intended use.

**§ 15.6.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner's Representative 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.

**§ 15.6.3** Upon receipt of the Contractor's list, the Owner's Representative will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Owner's Representative determines that the Work or designated portion thereof is substantially complete, the Owner's Representative will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

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

## **§ 15.7 Final Completion and Final Payment**

**§ 15.7.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner's Representative will promptly make such inspection and, when the Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will promptly issue a final Certificate for Payment stating that to the best of the Owner's Representative knowledge, information and belief, and on the basis of the Owner's Representative on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's Representative final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 15.7.2** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including costs and reasonable attorneys' fees.

**§ 15.7.3** Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

## ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1 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. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .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 trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

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 and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or 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 9.15.

### § 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition. 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 in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

## ARTICLE 17 INSURANCE AND BONDS

### § 17.1 Contractor's Insurance

The Contractor shall maintain the types and limits of insurance as set forth in Exhibit A, Insurance and Bond Requirements, until the expiration of the period for correction of Work set forth in Article 18.

### § 17.2 Owner's Insurance

#### § 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

#### § 17.2.2.7 Waiver of Subrogation

§ 17.2.2.7.1 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; and (2) 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 this 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 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 17.2.2.7 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.

**§ 17.2.2.7.2** 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 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

**§ 17.2.3 Other Insurance Provided by the Owner**

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

**Coverage**

**Limits**

**§ 17.3 Performance Bond and Payment Bond**

**§ 17.3.1** The Contractor is required to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract. Contractor shall furnish Bonds meeting the requirements of Exhibit A, Insurance and Bonds.

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

**ARTICLE 18 CORRECTION OF WORK**

**§ 18.1** The Contractor shall promptly correct Work rejected by the Owner 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 Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, 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 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. 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.

**§ 18.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

**§ 18.4** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 18.5** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

## ARTICLE 19 MISCELLANEOUS PROVISIONS

### § 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. Subcontracts, purchase orders and rental agreements entered into by the Contractor shall contain provisions permitting assignment to the Owner upon default by Contractor under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Contractor under this Agreement and for which payment has not already been made to the Contractor. Contractor shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement.

### § 19.2 Governing Law and Exclusive Venue

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of Liberty County, Texas.

### § 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Owner's Representative timely notice of when and where tests and inspections are to be made so that the Owner's Representative may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

### § 19.4 The Owner's representative:

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. Owner's Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. The term "Owner" means the Owner or the Owner's authorized representative.

The Owner's Authorized Representative:

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

Zachary Boles, CFO  
Tomball ISD  
310 S. Cherry Street  
Tomball, Texas 77375

### § 19.5 The Contractor's representative:

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



GC Contact  
Company Name  
Company Address  
Address 2

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

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

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 Termination by the Contractor

If the Owner's Representative fails to certify payment as provided in Section 15.4.1 for a period of 45 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 45 days, the Contractor may, upon seven additional days' notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, and accepted by the Owner

### § 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials.
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors.
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, y, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Owner's Representative, upon application, and this obligation for payment shall survive termination of the Contract.

### § 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work performed; and costs accepted by Owner up to the effective date of such termination.

## ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, but excluding those arising under Section 16.2, shall be referred initially to the Owner for written recommendation.

### § 21.2 Notice of Claims

§ 21.2.1 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 18.2, shall be initiated by written notice to the Owner within 14 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 21.2.2** 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 18.2, shall be initiated by notice to the other party.

**§ 21.3 Time Limits on Claims**

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

**§ 21.4** If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 21.5** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, may upon mutual written agreement, after written recommendation by the Owner or thirty (30) days after submission of the Claim to the Owner, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall not be a condition precedent to the initiation of any litigation arising out of such Claim. Claims for injunctive relief shall not be subject to this Section.

**§ 21.6** The parties may endeavor to resolve their Claims by mediation. A request for mediation shall be made in writing to the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

**§ 21.7** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

**§ 21.8** Any claim not resolved in mediation shall be subject to litigation

**§ 21.9 Continuing Contract Performance**

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 21.11 Waiver of Claims for Consequential Damages**

Intentionally Deleted.

**ARTICLE 22 Miscellaneous Provisions**

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

**§ 22.2 Certifications**

**§ 22.2.1** If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Contractor hereby certifies and verifies that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any (the "Contractor Companies"), boycotts Israel, and the Owner's Representative agrees that the Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or



with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

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

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

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

\_\_\_\_\_  
**OWNER** *(Signature)*

«Dr. Martha Salazar-Zamora »«Superintendent of  
Schools, Tomball ISD »

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
**CONTRACTOR** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Date)*