



PROMOTING EXCELLENCE • CREATING THE FUTURE

**INFORMAL REQUEST FOR PROPOSALS
for
DESIGN-BUILD SERVICES FOR STADIUM SCOREBOARD
AND SOUND SYSTEM IMPROVEMENTS PROJECT**

**CALALLEN INDEPENDENT SCHOOL DISTRICT
4205 WILDCAT DR.
CORPUS CHRISTI, TEXAS 78410**

Issue Date: April 25, 2025

**DEADLINE FOR SUBMISSION:
THURSDAY, MAY 22, 2025, 12:00 noon CST**

**Proposal Submission to:
Calallen ISD
Attention: Blair McDavid
Director of Operations
4205 Wildcat Dr.
Corpus Christi, TX 78410
bmcdavid@calallen.org**

**Pre-Proposal Meeting will be held at the CISD Administrative Office with onsite visit to the High School Stadium on May 1, 2025 at 10:00 am.
Attendance is strongly encouraged.**

The District is an Equal Opportunity employer/program. Historically Underutilized Businesses (HUB's) are encouraged to apply.

**INFORMAL REQUEST FOR PROPOSALS (RFP) FOR
DESIGN-BUILD SERVICES FOR STADIUM SCOREBOARD AND SOUND SYSTEM PROJECT**

The Calallen Independent School District (“CISD” or “District”) is soliciting Proposals (“Proposals”) from selected Design/Build Firms for Design and Construction of a new stadium scoreboard and sound system at the Calallen High School Phil Danaher Stadium (the “Project”) in accordance with the terms, conditions, and requirements set forth in this Request for Proposals (“RFP”). The objective of this solicitation is to contract with a single entity to provide a design-build solution to replace the existing High School Stadium scoreboard and sound system.

PLEASE NOTE: The District is utilizing an interlocal contract under the procurement requirements of Education Code 44.031(a). The District has entered into interlocal agreements under Government Code Chapter 791 with BuyBoard, OMNIA Partners Public Sector, and TIPS-USA Cooperative. **Proposers are required to provide proposals utilizing one of these qualified cooperative contracts.** Failure to provide a cooperative contract compliant proposal will result in disqualification.

Cooperative Contract Information:

- BuyBoard Cooperative Contract 678-22 Scoreboards, Signage, Digital Display Products, and Installation Services
- OMNIA Partners Public Sector Contract Number R220601 Scoreboards, Electronic Signs, Installation, Related Products and Services
- TIPS-USA Cooperative Contract 22090101 Scoreboards and Services (NON-JOC)

SECTION 1. GENERAL INFORMATION AND REQUIREMENTS

1.1 GENERAL INFORMATION. The RFP provides the information necessary to prepare and submit Proposals for consideration and ranking by the District. The District will rank the Proposals in the order that they provide the best value for the District based on the selection criteria published in this procurement. The general design criteria are generally as follows:

1.2 SCOPE OF WORK

Project Summary:

The approved contractor will deliver and construct a new athletic scoreboard located at Calallen’s High School stadium.

Special Note: No component or part of the existing scoreboard or structure may be reused or repurposed as part of this project. Any proposal tendered as a result of this procurement must reflect all new construction in compliance with current building and windstorm codes.

General Design Expectations:

- a. Assist the District in overall design of the scoreboard;
- b. Design, erect, and construct a turnkey multisport scoreboard on the designated site;
- c. Construct a scoreboard which meets or exceeds established windstorm code for the City of Corpus Christi;
- d. Design a 46' wide custom arch with 3' tall non-lit lettering indicating **Phil Danaher Stadium** (Concept provided in Appendix A);
- e. Design a video display with an area of 24' tall and 46' wide;
- f. Design the video display to be 11' above grade;
- g. Install new integrated stadium sound system which efficiently communicates with audio/video console in the new press box;
- h. Install an AV System that provides video and sound capacity at multiple field level points for game time commentating and post-game interviews.

Special Note: An example for the general design expectations has been provided within Appendix A. Proposals will be submitted without service catwalks to the rear of the scoreboard structure as a base proposal, and with catwalks as Alternate #1;

The Scope of Work shall include:

A. During Construction the Contractor will:

- a. Assist the District in overall design of the scoreboard;
- b. Provide design drawings, specifications, product data sheets and reports signed and sealed (as applicable) by an engineer registered in the State of Texas, as needed for construction purposes and for permitting of project through the City of Corpus Christi.
- c. Provide permitting efforts as needed obtaining project permits from the City of Corpus Christi, TX. The cost of paying permitting fees associated with project permit(s) shall be paid directly by the District. All other cost required for permitting shall be covered by the Design Build Contractor.
- d. Trace and locate existing electrical lines for scoreboard to determine location and depth of all lines. Mark and protect existing electrical lines from harm during construction.
- e. Provide for all structural, electrical, windstorm, etc. engineering services required to construct and satisfactorily complete the project;
- f. Construct new pier foundations and superstructure to support the scoreboard in accordance with current building codes;
- g. Install all electrical/mechanical, and servicing systems as a turnkey project;
- h. Submit shop drawings suitable for all necessary approvals;
- i. Provide two (2) complete sets of "As Built" paper drawings as well as an electronic copy for digital archive;
- j. Provide any change orders to the District for approval prior to implementation;
- k. Supply a list of component parts and replacement costs of routine maintenance components;

- l. Provide site security and safety as it relates to the construction site of the scoreboard. This will encompass six (6') tall temporary security fencing around the work area;
- m. Make all final connections of utilities and communications for full operability between the scoreboard and the audio/video console located in the new press box and on the field;
- n. Provide applicable training for any and all operating systems to District staff;
- o. Provide the District with M&O manuals for all systems as well as warranties;
- p. Provide all closing documentation certifying that construction is completed at the end of project;
- q. Maintain and submit all documentation relating to the work as required by the contract documents and/or applicable law;
- r. Make such documentation available upon request to owner for review and shall indemnify and hold owner and its employees, agents, affiliates, subsidiaries and related entities harmless from all costs, damages, expenses, fines or penalties associated with Contractor's failure to maintain and submit any such documentation as required by applicable law;
- s. Coordinate and communicate all activities with designated district staff.

During Demolition of the old Scoreboard the Contractor will:

- t. Remove and dispose of the existing scoreboard in accordance with local, State, and federal rules and regulations;
- u. Cap, disconnect, and remove all existing utility lines to a depth of 3' feet below grade at the site as required by governing codes, public officials, and utility companies;
- v. Demolish/remove any and all foundation piers of the existing scoreboard;
- w. Back fill with new topsoil any holes or as necessary to bring the site back to natural grade;
- x. Completely, properly, and safely demolish and dispose of any and all materials and associated debris, structures and items as identified in and required;
- y. Remove all structures there on and legally dispose of all such materials in a first class, workmanlike manner, utilizing only those procedures as are required by or consistent with applicable local, state, and federal law;
- z. Utilize all appropriate engineering and related controls (site fencing, critical barriers, etc. and work methods to minimize the exposure to dust and other hazardous materials during the demolition process;
- aa. Provide all OSHA exposure monitoring, respirators and related safety equipment as required by applicable law;
- bb. Promptly report to the District any errors, inconsistencies or omissions discovered or any variances observed by contractor from applicable law, statues, ordinances, building codes, rules, regulations, or any lawful orders of any governmental body, or public or quasi-governmental authority;
- cc. Provide all closing documentation certifying that construction is completed at the end of project;
- dd. Full site clean-up and restoration of site to pre-construction condition or better.

The Scope of Work above is not intended to be an exhaustive scope list, however it is expected that the Design-Build Team will provide whatever consultants, design services necessary to advise the District regarding most economically advisable and feasible manner to address the construction of the High School stadium scoreboard as listed above.

The required site plans, geotechnical reports, and general specifications for this project together with the concept color scheme drawings for the scoreboard are provided by the District in [RFP APPENDIX A](#).

1.3 DEFINITIONS. As used in this RFP, the terms below have the meanings set forth below:

- A. "Design-Build Contract" means a single contract with a design-build firm for the design and construction of facility components.
- B. "Design-Build Firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in construction in Texas.

1.4 PROJECT OVERSIGHT. The District has selected Stridde Callins & Associates (MEP Engineer) and Wilkerson & Sanders (Structural Engineer) as the independent design representative firm to provide services as required by Texas Government Code, Section 2267.305 to act as the District's independent representative for the duration of the Project and will provide advice to the District regarding design, and project oversight on behalf of the District. Cooperation with the independent design representative will be imperative and Design-Builder's track-record for such cooperation will be considered in the evaluation process.

1.5 REVIEW OF PROJECT SITE. A Pre-Proposal Meeting will be held at the Calallen ISD Administration Building, 4205 Wildcat Dr, Corpus Christi, TX 78418, on May 1, 2025 at 10:00 a.m. (CST). Site visits will be conducted at the stadium after the initial meeting. ***Attendance is not mandatory but is strongly encouraged.***

Accessibility. To arrange for special assistance to attend this meeting or if you have questions regarding accessibility, please contact the District in advance of the meeting by emailing the District's Director of Operations, Mr. Blair McDavid at bmcdavid@calallen.org.

Each Proposer, before submitting their Proposal, shall fully examine and acquaint themselves with the sites of the proposed Project. Proposer shall make such investigations as they may deem necessary to fully inform themselves of the existing conditions, facilities, difficulties, restrictions, and requirements incident to completion of the Project under the terms of the Contract. Failure of the Proposer to acquaint themselves adequately with the site and such conditions, facilities, difficulties, restrictions, and requirements will not relieve them of their obligation to perform the entire Contract at the price set forth in this proposal.

1.6 PUBLIC INFORMATION. The District fully complies with the Texas Public Information Act. During the course of the selection process any RFP response is exempt from disclosure to the public under the Texas Public Information Act. The submitted Proposals will, upon the award of the contract, become a public record; and therefore, subject to disclosure to any

person who makes a proper request for review of the documents. Some of the information you may provide in your Proposal may contain commercial or financial information which you consider privileged or confidential, or may be of a nature which you feel may cause substantial competitive harm to your business if disclosed by the District to a third-party even after the award. You may be entitled to protect this information at the time a request is made for disclosure; however, you will need to consult your legal counsel to assure that this kind of information, if included in your Proposal, is properly marked as confidential prior to submission. Wholesale marking of your entire proposal "Confidential" or "Proprietary" will not be effective. The District fully complies with the Texas Public Information Act. In the event information from your Proposal is requested, the District will use its best efforts to notify the Proposer of such request, but will have no duty to assert any claim to the Attorney General regarding that the proposal or any parts of the proposal are not subject to disclosure under the Act.

1.7 FORM OF CONTRACT. Any contract resulting from this solicitation shall be the AIA Document A141-2014, *Standard Form of Agreement Between Owner and Design-Builder*, as modified by the Owner. The Contract and exhibits thereto are all attached as **RFP APPENDIX B. Proposers are required to delineate any comments or requested changes and include an explanation for the requested change in its response, otherwise the Proposer will be deemed to have accepted the form of Agreement as written.** The final contract is subject to review and approval of the District's legal counsel.

1.8 CLARIFICATIONS AND INTERPRETATIONS. Any clarifications or interpretations of this RFP that materially affects or changes its requirements will be issued by the District as an addendum. It is the responsibility of all Proposers to obtain this information in a timely manner. All such addenda issued by the District before the proposals are due are part of the RFP, and Proposers shall acknowledge receipt of and incorporate each addendum in its Proposal. District will consider only those clarifications and interpretations that Proposers submit five (5) days prior to the submittal deadline. Interpretations or clarifications in any other form, including oral statements, will not be binding on the District and should not be relied on in preparing Proposals.

1.9 ADDENDA. Changes in or official interpretations of the Procurement and/or Contract Documents will be made only by written addenda. Addenda will be issued primarily by e-mail. Proposers that do not have access to e-mail may make special arrangements with the District Contact for alternate delivery methods.

Receipt of all addenda issued shall be acknowledged in each Proposer's proposal, and shall constitute a part of the final contract. It is the duty of each Proposer to obtain any and all addenda and failure of any Offeror to receive any addendum will not release them from any obligation under their Proposal. However, if any Proposer fails to receive any addendum, and their offer is otherwise determined by the Owner to provide the best value, the contract may be awarded to them and the changes in the work set out in the addendum will be incorporated into the contract by a change order, with a corresponding adjustment in the contract price to be made as provided in the Conditions of the Contract.

1.10 SUBMISSION OF PROPOSALS.

- A. **Deadline and Location.** Proposals must be received not later than **12:00 Noon (CST) on Thursday, May 22, 2025.** Any proposal received after such time will not be considered and will be returned unopened.

Proposal envelopes must be plainly marked on the outside with the Respondent's name and address and **"CALLEN ISD RFP FOR DESIGN-BUILD SERVICES FOR STADIUM SCOREBOARD AND SOUND SYSTEM PROJECT** may be **mailed or hand delivered, or emailed** to Calallen ISD, Attention: Blair McDavid (Director of Operations), 4205 Wildcat Dr., Corpus Christi, TX 78410.

- B. The District will ***NOT*** accept Proposals that are delivered by telephone, facsimile (fax), or electronic mail (e-mail). It is the sole responsibility of submitting firms to ensure timely receipt of the RFP response and to properly label the documents as indicated in this RFP. The District is not responsible for RFP's mailed and not delivered by the deadline above.
- C. Proposals received prior to the date and time above may be modified provided such modifications are received at the designated location above before the deadline. Any RFP or modification received after the deadline will **NOT** be accepted.

1.11 POINTS-OF-CONTACT/RESTRICTION ON COMMUNICATION. The District designates the following people as their District Representatives and Point-of-Contacts for this RFP. Proposers shall restrict all contact with the District and direct all questions regarding this RFP, including questions regarding terms and conditions via email to Blair McDavid as the primary Point-of-Contacts.

District Representatives:
Blair McDavid
Calallen ISD, Director of Operations
4205 Wildcat Drive
Corpus Christi, TX 78410
Email: bmcdavid@calallen.org
Phone : 361-438-3875

Mike Kesterson
Stridde Callins & Associates
342 S. Navigation Blvd.
Corpus Christi, TX 78405
E: m.kesterson@scaengineering.com
Phone: 361.883.9199

Keith Sanders
Wilkerson & Sanders
3530 S. Alameda St.
Corpus Christi, TX 78411
E: ksanders.pe@gmail.com
Phone : 361.853.2071

- A. Proposers shall restrict all contact with the District and direct all questions regarding this RFP to the District's Representatives specified above.
- B. **The proposers SHALL NOT contact in any manner, nor deliver gifts or other items, to any District employee (other than the point of contact listed herein for questions and submissions), School Board member, or District consultant during this proposal solicitation, evaluation, and award process without prior approval of the Director of Operations. This restriction extends to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by proposers. Failure to comply will result in disqualification.**

1.12 EVALUATION OF PROPOSALS. The evaluation of the Proposals shall be based on the requirements, criteria and weight of criteria in this RFP (Section 2). All properly submitted Proposals will be reviewed, evaluated, and ranked by the District.

1.13 DISTRICT'S RESERVATION OF RIGHTS. The District reserves the right to reject any and all Proposals and re-solicit for new Proposals, or to reject any and all proposals and temporarily or permanently abandon the Project. District makes no representations, written or oral, that it will enter into any form of agreement with any Proposer to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

1.14 ACCEPTANCE OF EVALUATION METHODOLOGY. By submitting its Proposal in response to this RFP, proposer accepts the evaluation process and acknowledges and accepts that determination of the firm(s) providing the best value to the District will require subjective judgments by the District.

1.15 NO REIMBURSEMENT FOR COST. Proposer acknowledges and accepts that any costs incurred from the Proposer's participation in this RFP process shall be at the sole risk and responsibility of the Proposer.

1.16 ELIGIBLE PROPOSERS. Only individual firms or lawfully formed business organizations may apply (This does not preclude a proposer from using consultants.) The District will contract only with the individual firm or formal organization that submits a Proposal.

1.17 WAIVER OF CLAIMS. By submitting a proposal, each proposer agrees to waive any claim it has or may have against the District its trustees, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any Proposal; waiver of any requirements under the proposal documents; acceptance or rejection of any Proposal; and award of a contract.

1.18 PREVAILING WAGE RATE DETERMINATION. Proposers are advised that the Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor (i.e. the Design Builder) and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

The District has adopted the Department of Labor’s prevailing wage rates shown in the schedule attached hereto as **RFP APPENDIX B, Exhibit C** as the applicable rates for this Project.

1.19 CONFLICTS-OF-INTEREST. Proposer acknowledges that it is informed that District Policy and Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the District, shall file a completed conflict of interest questionnaire with the appropriate district records administrator not later than the 7th business day after the date that the person: (1) begins contract discussions or negotiations with the District; or (2) submits to the District an application, response to a request for qualifications, proposals or bids, correspondence, or another writing related to a potential agreement with the District. The conflict-of-interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed conflict of interest questionnaires may be mailed or delivered by hand the address indicated on page 1. Please consult your own legal counsel if you have questions regarding the statute or form.

1.20 CRIMINAL BACKGROUND CHECKS. Proposer should review the provisions of the form of agreement included with this procurement package regarding criminal history requirements. Please refer to Section 15.11 regarding Criminal History Records Checks in the proposed AIA Document A141-2014, *Standard Form of Agreement Between Owner and Design-Builder*, as modified by the Owner.

1.21 DOCUMENT REVIEW. Proposers are expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THE REQUIRED ITEMS MAY RESULT IN THE PROPOSER’S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION

SECTION 2. CRITERIA, WEIGHT OF CRITERIA, AND EVALUATION OF PROPOSALS

2.1 CRITERIA AND WEIGHT OF CRITERIA. In accordance with Education Code 44.031(b) and Government Code 2269.155, in evaluating qualified proposals for contract award, the District will use the Best Value Method to determine the awarded vendor(s). In determining Best Value, the District will consider the following evaluation criteria, which will be evaluated based on the following scale:

WEIGHT	CRITERIA
30%	General Information and Proposer’s Experience, Reputation and References
10%	Proposer’s Project Personnel and Qualifications
10%	Product and Warranty information
50%	Price Proposal

The district will select the Respondent that submits the proposal that offers the best value for the district based on the selection criteria and weighted values above.

Following the ranking of the Proposals based on the published selection criteria and board action to approve the ranking, the District will attempt to negotiate an agreement with the Respondent that offers the best value to the District. If the District is unable to negotiate an agreement with the selected Respondent, the District will, formally and in writing, end negotiations with that Respondent and begin the negotiation process with the next ranked Respondent in the order of selection ranking until a contract is reached or negotiations with all ranked Respondents end. Please note that the Board may choose to delegate authority to the District's Administration to negotiate and/or execute a contract depending on the specific Board action taken.

2.2 EVALUATION OF PROPOSALS.

- A. The District reserves the right to reject any or all Proposals. There will be no contractual obligation on the part of the District to any proposer, nor will any proposer have any property interest or other right in the contract unless and until a reasonable price for the services is negotiated, the contract is unconditionally executed, and all conditions to be fulfilled by the proposer (e.g. bonding and insurance documentation provided) have either been fulfilled by the Respondent or waived in writing by the District.
- B. **Proposers are required to provide price proposals under one of these qualified cooperative contracts listed in this procurement.** Failure to provide a cooperative contract compliant proposal will result in disqualification. The District will rank each proposal submitted from first to last based on all of the criteria published in the RFP, with the first ranked proposal being the proposal offering the best value to the District.

SECTION 3. SUBMITTAL REQUIREMENTS

3.1 DEADLINE AND LOCATION. Proposals must be received not later than **12:00 Noon (CST), Thursday, May 22, 2025**. Any proposal received after such time will not be considered and will be returned unopened. Proposal envelopes must be plainly marked on the outside with the Respondent's name and address and **"CALALLEN ISD RFP FOR DESIGN-BUILD SERVICES FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT** may be mailed, hand delivered, or submitted via email to Calallen ISD, Attention: Blair McDavid (Director of Operations), 4205 Wildcat Dr., Corpus Christi, TX 78410. Email: bmcdavid@calallen.org

The District will **NOT** accept Proposals that are delivered by telephone or facsimile (fax).

3.2 FORMAT. A complete Proposal will consist of One (1) clearly marked original containing original signatures, and Seven (7) clearly marked exact copies using standard letter size paper (8.5" x 11"). The 'original' response shall prevail in the event of a discrepancy between the Proposer's submissions.

3.3 REQUIREMENTS. Proposals and responses shall be direct, concise, and complete; prepared in a manner that provides a straightforward description of the respondent's ability to meet the requirements set forth in the RFP. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the District's needs. When submitting a proposal, it is required that the Proposer have the necessary professional experience, prior training and applicable professional judgment to perform the activities proposed to supply the services requested by this RFP. Proposers are expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely.

3.4 PROPOSAL ORGANIZATION. Proposer's response shall include the following items in the following sequence:

- a. **PROCUREMENT PROPOSAL RESPONSE PACKET:** All Proposers must utilize the provided Procurement Proposal Response Packet **RFP ATTACHMENT A** as means of response to be considered. All pages in the provided packet must be completed and all required signatures present to be considered.

3.5 Proposers are expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE ITEMS MAY RESULT IN THE PROPOSER'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

SECTION 4. PROJECT SCHEDULE AND BENCHMARKS

The Districts proposed project schedule is provided in **RFP APPENDIX A** as developed by CEI Engineering. Physical site work is anticipated to begin on or about January 5, 2026, after the award of the contract and the provision of bonds and insurance, and be substantially complete by June 1, 2026 and shall be fully substantially complete by no later than July 15, 2026, except as extended by legitimate extensions of time due to unavoidable delays to the project.

This Schedule of construction requires the Proposer to provide crews of personnel as required to complete the project on time. Contractor and Subcontractors shall provide sufficient skilled manpower to perform the work.

As part of the Proposal in **ATTACHMENT A**, the Proposer is required to provide a detailed timeline supporting completion of work by the defined Substantially Complete benchmarks outlined above.

SECTION 5. SUMMARY OF ENCLOSURES

- **APPENDIX A – PROJECT SPECIFICATIONS**
 - Includes general specifications, conceptual designs, geotechnical reports, and site locations

- **APPENDIX B – FORM OF CONTRACT**
 - AIA Document A141-2014, Standard Form of Agreement Between Owner and Design-Builder
 - Exhibit A - AIA Document A141-2014 Design Build Amendment
 - Exhibit B - AIA Document A141-2014 Insurance and Bonds
 - Exhibit C - Prevailing Wage Rate Schedule for Project

- **ATTACHMENT A – PROCUREMENT PROPOSAL RESPONSE PACKET**

ATTACHMENT A

PROCUREMENT PROPOSAL RESPONSE PACKET

All Proposers must utilize the provided Procurement Proposal Response Packet as means of response to be considered. All pages in the provided packet must be completed and all required signatures present to be considered. Proposals and responses shall be direct, concise, and complete; prepared in a manner that provides a straightforward description of the respondent's ability to meet the requirements set forth in the RFP. Emphasis should be on completeness, clarity of content, responsiveness to the requirements, and an understanding of the District's needs.

Additionally, Proposer is required to enclose the following documentation to support their proposal:

- *Documentation reflecting proposed scope of work, including plans, specifications, and details of all products proposed*
- *Detailed timeline supporting completion of work by the defined Substantially Complete benchmarks*
- *Documentation supporting all criteria in Respondent's General Questionnaire (Attachment A)*

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



Note: All pages must be completed by Proposers and Submitted with Final Proposal.

VENDOR APPLICATION - REQUIRED FORM

Instructions:

1. The application form should be completed and signed by an authorized representative of the vendor.
2. The application must be submitted with all supporting documents and completed certifications.

Notice to Prospective Vendors:

1. Vendors are not placed on the district’s approved vendor list until a purchase order is approved by the purchasing department.
2. Vendors must accept purchase orders for all purchases. The district will not be responsible for payment for goods or services that are provided to Calallen ISD staff without an approved purchase order issued.
3. All invoices must reflect the purchase order number and must be emailed or mailed to the Calallen ISD Accounts Payable Department (email address and mailing address are noted below).
4. All payments are net thirty (30) days after receipt of the goods and/or services.

VENDOR IDENTIFICATION:	
Vendor Full Legal Name	
Vendor DBA (if applicable)	
Texas Taxpayer ID #	
VENDOR CONTACT INFORMATION:	
Vendor Mailing Address:	
Vendor Remit Address: (if different from mailing)	
Vendor Phone Number:	
Vendor Fax Number:	
Vendor Website URL:	
Vendor Email Address: (for point of contact on procurement)	

I hereby certify that the above information is true and correct. I further certify that I am an authorized representative of this vendor.

 Authorized Representative (Print Name)

 Title

 Authorized Representative (Signature)

 Date

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



Note: All pages must be completed by Proposers and Submitted with Final Proposal.

RESPONDENT’S PROPOSAL - REQUIRED FORM

This form contains required responses that align with the District’s advertised evaluation criteria and weights, and are developed to assist the District in methodology and evaluation.

PLEASE NOTE: The District is utilizing an interlocal contract under the procurement requirements of Education Code 44.031(a). The District has entered into interlocal agreements under Government Code Chapter 791 with BuyBoard, OMNIA Partners Public Sector, and TIPS-USA Cooperative. **Proposers are required to provide proposals utilizing one of these qualified cooperative contracts.** Failure to provide a cooperative contract compliant proposal will result in disqualification. Please indicate below which cooperative contract is applicable to your proposal:

- BuyBoard Cooperative Contract 678-22 Scoreboards, Signage, Digital Display Products, and Installation Services
- OMNIA Partners Public Sector Contract Number R220601 Scoreboards, Electronic Signs, Installation, Related Products and Services
- TIPS-USA Cooperative Contract 22090101 Scoreboards and Services (NON-JOC)

DESCRIPTION OF PROPOSED SERVICES

The District is soliciting proposals from qualified vendors to provide for the following services. General specifications, site plans, conceptual designs, and geo-technical reports are provided as **Exhibit A**.

- Contractor will demolish existing high school stadium scoreboard;
- Vendors will be required to include pricing for all materials and spoils removed from these projects to an approved offsite facility. None of the materials will be retained or stored on Calallen district grounds;
- Construct the approved video scoreboard within the stadium where indicated;
- Remove the existing sound system and provide to the district;
- Install and integrate the new stadium video board, controller console, and sound system within the stadium;
- Ensure all components of the stadium audio/visual system are operable;
- Provide M&O manuals for the maintenance department on all components;
- Provide staff training after construction, and technical support for one year after the sale.

EXPERIENCE, REPUTATION, AND REFERENCES – 30 POINTS TOTAL

1. References – all information provided in this response packet will be considered
2. In the last five (5) years has your organization: (if the answer to any question below is yes, please explain)
 - a. Failed to complete any work awarded to it? _____
 - b. Had any judgements, claims, arbitrations proceedings, or suits filed against your organization or its officers? _____
 - c. Filed any judgements, claims, arbitrations proceedings, or suits with regard to contracts? _____
 - d. Filed for bankruptcy? _____
 - e. If the answer to any question above is yes, please explain: _____

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT



ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET

Note: All pages must be completed by Proposers and Submitted with Final Proposal.

3. Describe what experience your organization has in providing these services. _____

4. How many years has your organization provided these services to non-profits, school districts, and other governmental entities? _____
5. What makes your team unique and most qualified to deliver these services? _____

6. What are the qualifications of the people who will be delivering the day-to-day services of the proposed contract? _____

BASE PROPOSAL CONTRACTOR/SUB-CONTRACTOR LIST

Special Note: Provide the following contact information for any contractor associated with this proposal.
(Attached additional sheets as necessary)

CONTRACTOR/SUB-CONTRACTOR 1:

Company Name: _____
Address: _____
Contact Person: _____
Phone: _____

CONTRACTOR/SUB-CONTRACTOR 2:

Company Name: _____
Address: _____
Contact Person: _____
Phone: _____

CONTRACTOR/SUB-CONTRACTOR 3:

Company Name: _____
Address: _____
Contact Person: _____
Phone: _____

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



Note: All pages must be completed by Proposers and Submitted with Final Proposal.

PROJECT PERSONNEL AND QUALIFICATIONS – 10 POINTS TOTAL

1. What are the qualifications of the person overseeing the proposed services and contract? _____

2. Describe your organizations approach to providing quality work, and addressing and correcting unsatisfactory work: _____

3. What is your availability for this project? From the contract award date, in how many days can you begin from Notice to Proceed? _____

QUALITY OF PRODUCT AND WARRANTY INFORMATION – 10 POINTS TOTAL

Any and all materials proposed as part of this procurement must meet or exceed the specifications described within this document. **Proposer must provide** submittals, manufacturer cut sheets, warranty information, and any other additional information deemed necessary for all proposed materials and assemblies for review and consideration when evaluating the proposal.

1. Summarize Proposed Warranties: _____

PROPOSAL PRICE – 50 POINTS TOTAL

The District will consider the total contract cost as part of the evaluations. The District shall have the right to accept alternates in any order or combination unless otherwise specifically provided in the Proposal Documents, The Respondent submitting the lowest proposed cost shall receive the highest number of points in this category, and the Responded submitting the highest proposed cost shall receive the lowest number of points in this category. The District will use the Best Value method, where cost is not the sole determinate in evaluation and selection. Lowest cost does not automatically result in best value. **Vendors will be required to submit a Schedules of Values for the proposed work as well as part of your overall proposal.**

Scoreboard:

Video Display Scoreboard	\$ _____ ;
Integrated Stadium Sound System	\$ _____ ;
Video production/controller console	\$ _____ ;
Stadium Scoreboard Sub-Total	\$ _____ ;
Owner’s Contingency (Required)	\$10,000.00 _____ ;
GRAND TOTAL COST:	\$ _____ ;
Alternate #1 added Cat walk	\$ _____ ;

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT



ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET

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HISTORICALLY UNDERUTILIZED BUSINESS (HUB) –

1. Is your organization a HUB? If so, please provide certificate. _____

PROPOSAL ENCLOSURES

Proposer is required to enclose the following documentation to support their proposal:

- Documentation reflecting proposed scope of work, including plans, specifications, and details of all products proposed
- Detailed timeline supporting completion of work by the defined Substantially Complete benchmarks
- Supplemental information may be provided in addition to the required Procurement Proposal Response Packet. Physical size of the supplemental information may not exceed 35 pages. The District at its sole discretion may elect to consider or disregard any supplemental information that is submitted in evaluating responses.

PROPOSAL AGREEMENTS

Proposer understands this proposal is subject to review and Board approval. We further understand that all activities will be coordinated through Calallen ISD’s Director of Maintenance.

Proposer represents that, prior to preparing this Proposal, they have carefully read the Contract Documents, examined the site of the Project, and had made an investigation such that they are fully informed of the conditions, facilities, difficulties, restrictions, and requirements which they will, or may encounter in the completion of the Project in accordance with the terms of the Contract Documents.

Proposer understands that Calallen ISD reserves the right to reject any or all proposals and to waive any informalities in the proposal, and to award the contract in the best interests of Calallen ISD.

Proposer agrees that if their Proposal is accepted by the Owner, Proposer will **partially Substantially Complete all major work on or before July 15, 2026 and fully Substantially Complete with all remaining minor work on or before July 31, 2026** for all work, and if the work is not completed by such time, Proposer agrees to pay to Owner, as liquidated damages, the sum of five hundred dollars (\$500.00) for each calendar day after such time that the work remains incomplete, calculated in accordance with the provisions of the Contract Documents.

PROJECT SCHEDULE

The following indicates the anticipated schedule of the project. Proposers represents that they have carefully read the project schedule, and provided an enclosure that supports completion of all work in proposal in accordance with the project schedule defined below.

Contract Award	June 9, 2025
Notice to Proceed	Estimated June 16, 2025
Commence Project Physical Work Start	Monday, January 5, 2026
Substantial Completion of Major Work	Wednesday, July 15, 2026
Substantial Completion of All Work	Friday, July 31, 2026

CONTRACT DOCUMENTS: In addition to your price proposal, provide any comments or requested changes to the form of Contract Documents and include an explanation for the change, otherwise Respondent will be deemed to have accepted the form of the Contract Documents found in Appendix 1 and throughout the RFCSP solicitation.

**CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**

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The undersigned confirms that the Respondent's Proposal Form and all required Proposal Enclosures defined above contains all required information above, and that all information is correct to the best of his/her knowledge.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT

ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET

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PROPOSAL RESPONSE CERTIFICATION - REQUIRED FORM

The undersigned authorized representative of the responding company indicated below hereby acknowledges:

1. That the respondent is authorized to enter into contractual relationship on behalf of the responding company indicated below.
2. That respondent has carefully examined this document in its entirety.
3. The respondent proposes to supply any products or services submitted under this solicitation in strict compliance with all terms, policies and procedures, unless any exceptions are noted.
4. That any and all exceptions have been noted in writing in the response and that no other exception will be claimed.
5. The accuracy of all certifications required which accompany this proposal.
6. The stated organization is an equal opportunity employer.
7. That any prices in this offer have been determined independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter related to such prices, with any other Respondent or with any competitor.
8. That notice of award and/or any communication regarding an award will be submitted via GISD and not by any consultant, Respondent or other party involved in this solicitation.
9. That the organization has not been a party to any collusion among Respondent in restraint of freedom of competition by agreement to offer at a fixed price or to refrain from offering; or with any CISD employee, Board Trustee, or consultant as to quantity, quality, or price in the prospective contract, or in any terms of the prospective contract except in any authorized discussion(s) with CISD's Purchasing personnel; or in any discussions or actions between Respondent and any CISD employee, Board Trustee, or consultant concerning exchange of money or other things of value for special consideration in the award of this contract.
10. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
11. By submitting a Proposal, Respondent agrees to waive any claim it has or may have against the District, its trustees, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any Proposal; waiver of any requirements under the Proposal documents; acceptance or rejection of any Proposal; and award of the Proposal. The District shall have no contractual obligation to any Respondent, nor will any Respondent have any property interest or other right in the Proposal or contract being proposed unless and until the contract is unconditionally executed and delivered by all parties, and all conditions to be fulfilled by the Respondent have been fulfilled by the Respondent.

By submitting this proposal, the Respondent warrants that the Respondent has had the opportunity to carefully examine the site of the proposed work and all of the requirements of the RFCSP. The Respondent further warrants that the Respondent is satisfied that there are no conflicts in the bidding documents and that the site proposed for the project is suitable for the work. By submission of a proposal in response to this RFCSP, the Respondent confirms Respondent's understanding of the entire document and all of its contents. The Respondent also represents that its firm possesses the personnel, processes, and technology necessary to safely and efficiently perform the work outlined in this RFCSP.

Your signature below is the Proposal Response Certification acknowledgement.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



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REFERENCES - REQUIRED FORM

Please complete the reference fields below. Vendor should list as references school districts and/or other governmental entities (other than Calallen ISD) for which vendor has provided products or services similar to what is requested on this proposal. Additional references for the can be provided as an attachment, but the minimum required for this proposal is 3 references.

Reference 1

Name of Entity:
Contact Name & Title:
Mailing Address:
Phone Number:
Email Address:
Date of Similar Products/Services Delivered:
Brief Description of Similar Products/Services Delivered:

Reference 2

Name of Entity:
Contact Name & Title:
Mailing Address:
Phone Number:
Email Address:
Date of Similar Products/Services Delivered:
Brief Description of Similar Products/Services Delivered:

Reference 3

Name of Entity:
Contact Name & Title:
Mailing Address:
Phone Number:
Email Address:
Date of Similar Products/Services Delivered:
Brief Description of Similar Products/Services Delivered:

The undersigned confirms the above information is correct to the best of his/her knowledge and understands the District may contact any of the above.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

**CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**



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SAFETY & SECURITY MEASURES - REQUIRED FORM

Student, instructor and all staff safety and campus security are of the utmost importance to the District, and safety and security measures are required by state law or prescribed for in District policy and procedures. Adherence to the District safety & security measures while on District premises is required. Each campus presents security concerns in terms of site access, traffic, classroom and non-classroom related functions. The work performed at each campus is directive in nature and work rules for each project can vary depending on the scope of work. CISD has responsibilities to the students, staff, the State of Texas and others to ensure that safety measures are strictly applied on each project.

1. Requirements:

- a) The Contractor, Subcontractor, their agents, and all others who perform Work on any District campuses are required to observe and abide by the campus security.
- b) The Contractor, Subcontractors, and their agents shall comply with the criminal history records checks requirements of Section 2 below.
- c) Contractor Supervisor and Designated Support Personal:
 - i. Supervisor shall be present for all activities. If Owner finds out that the supervisor or their designated staff are not in responsible charge of the worksite, Owner may terminate work activities at the Contractors expense until such time the appropriate personnel are back in responsible charge.
 - ii. Supervisor is responsible for securing the project site each day after work and shall confirm that the site is safe and secure. Check all interior and exterior doors, floor hatches, roof hatches, roof access doors, gates, temporary barricades and the like.
 - iii. Supervisor is responsible for verifying that the project and site are clean after work each day. All trash is disposed of in approved containers. Floor surfaces are clean. Campus grounds are clear and all holes are covered up.
- d) RAPTOR Checks:
 - i. All contractor personnel shall obtain a RAPTOR check upon their first day of work on the project. The Contractor is required to obtain a replacement badge if their badge gets damaged or becomes non-legible. All personnel will be issued a paper badge with their name, photo, and date of issue. This badge shall be affixed to a badge clip that shall be affixed to their uniform shirt in the upper torso area and shall be worn at all times.
 - ii. Contractor shall obtain a new Raptor badge every month around the 1st day of the month regardless of the initial badge issued date. Contractor shall contact the Maintenance Office and schedule the quantity of personnel requiring retesting in advance so as to not overload the maintenance office regular school activities.
- e) Owner reserves the right to question all Contractor personnel and to perform additional background checks and safety and security screening as applicable at their discretions for any persons working on school district property.
- f) Campus Check-in Procedures:
 - i. The Supervisor or designated staff shall check in at the main office of each school campus each workday and shall be responsible for facility access and control direct sub-contractor

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT



ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET

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supervision. Contractor personnel and sub-contractors are not required to check-in to a campus that has a Supervisor in responsible charge.

- ii. All employees must check-in at the Maintenance for the 1st day at work and at the 1st of the month.

2. Criminal History Records Checks: Respondent should review the provisions of the form of agreement included with this procurement package regarding criminal history requirements. Please refer to Section 15.11 regarding Criminal History Records Checks in the proposed AIA Document A141-2014, *Standard Form of Agreement Between Owner and Design-Builder*, as modified by the Owner.

3. Code of Conduct:

- a) All Contractor, Subcontractors, and their agents shall be required to wear company uniforms with company name and logo clearly marked, RAPTOR tags that are currently up to date, and all appropriate and applicable safety gear such as hard hats at all times when on District premises. All attire shall be clean and presentable at the start of work each day.
- b) Interaction with students, faculty, and staff is discouraged. The District will not tolerate "cat-calling," "whistling," "profanity," or derogatory remarks.
- c) No smoking or tobacco products, illegal drugs or weapons or firearms are allowed on District premises.

I, the undersigned agent for the firm named below, certify that the information concerning safety & security measures has been reviewed by me, the following information furnished is true to the best of my knowledge and I acknowledge compliance with this section.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
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CERTIFICATE OF RESIDENCY - REQUIRED FORM

Pursuant to Government Code, Chapter 2252 a district may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or the state in which a majority of the manufacturing relating to the contract will be performed. (Gov't Code 2252.002).

Definitions (Gov't Code 2252.001)

- "Governmental contract" means a contract awarded by a governmental entity, including a public school district, for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment.
- "Resident bidder" refers to a person whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state (Texas).
- "Nonresident bidder" refers to a person who is not a resident.

Indicate the certification of residency that applies:

_____ My company is a "resident Respondent"

_____ My company is a "nonresident Respondent" of _____ (the state your principal place of business is located)

If applicable, does your "resident state" require Respondent whose principal place of business is in Texas to under Proposal, Respondents who resident state is the same as yours by a prescribes amount or percentage to receive a comparable contract?

_____ No

_____ Yes, the amount or percentage is _____

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

**CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**



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**CERTIFICATONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS –
REQUIRED FORM**

Lobbying: This certification is required by the Federal Regulations, implementing Section 1352 of the Program Fraud and Civil Remedies Act, Title 31 U.S. Code, for the Department of Education (34 CFR Part 82), Department of Health and Human Services (45 CFR Part 93).

The undersigned contractor certifies that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

Debarment, Suspension, and Other Responsibility Matters: This certification is required by the Federal Regulations, implementing, Executive Order 12549, Government-wide Debarment and Suspension, for the Department of Agriculture (7 CFR Part 3017), Department of Labor (29 CFR Part 98), Department of Education (34 CFR Parts 85, 668 and 682), Department of Health and Human Services (45 CFR Part 76).

The undersigned contractor certifies that neither it nor its principals:

- (1) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- (2) Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State or Local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in Paragraph (2) of this certification; and,

**CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
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- (3) Have not within a three-year period preceding this contract had one or more public transactions terminated for cause or default.

Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective recipient shall attach an explanation to this certification.

Drug-Free Workplace: This certification is required by the Federal Regulations, implementing Sections 5151-5160 of the Drug-Free Workplace Act, 41 U.S.C. 701; for the Department of Agriculture (7 CFR Part 3017), Department of Labor (29 CFR Part 98), Department of Education (34 CFR Parts 85, 668 and 682), and Department of Health and Human Services (45 CFR Part 76).

The undersigned contractor certifies that it shall provide a drug-free workplace by:

- (a) Publishing a policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the consequences of any such action by an employee;
- (b) Establishing an ongoing drug-free awareness program to inform employees of the dangers of drug abuse in the workplace, the Contractor's policy of maintaining a drug-free workplace, the availability of counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed on employees for drug abuse violations in the workplace;
- (c) Providing each employee with a copy of the Contractor's policy statement;
- (d) Notifying the employees in the Contractor's policy statement that as a condition of employment under this contract, employees shall abide by the terms of the policy statement and notifying the Contractor in writing within five days after any conviction for a violation by the employee of a criminal drug statute in the workplace;
- (e) Notifying the District within ten days of Contractor's receipt of a notice of a conviction of an employee; and,
- (f) Taking appropriate personnel action against an employee convicted of violating a criminal drug statute or require such employee to participate in a drug abuse assistance or rehabilitation program.

These certifications are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

**CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
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ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**



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TEXAS CORPORATE FRANCHISE TAX CERTIFICATION - REQUIRED FORM

Pursuant to Article 2.45, Texas Business Corporation Act, state agencies may not contract with for Profit Corporation's that are delinquent in making state franchise tax payments. The following certification that the corporation entering into this contract is current in its franchise taxes must be signed by the individual on Form 203, Corporate Board of Directors Resolution, to sign the contract for the corporation.

The undersigned authorized representative of the corporation contracting herein certifies that the following indicated statement is true and correct and that the undersigned understands making a false statement is a material breach of contract and is grounds for contract cancellation.

Indicate the certification that applies to your corporation:

_____ The Corporation is a for-profit corporation and certifies that it is not delinquent in its franchise tax payments to the State of Texas.

_____ The Corporation is a non-profit corporation or is otherwise not subject to payment of franchise taxes to the State of Texas.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

**CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**



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CRIMINAL HISTORY RECORDS CHECKS - REQUIRED FORM

All Respondents and its subcontractors of every tier must comply with the Criminal History Records Checks prescribed by Texas Education Code, Section 22.08341 (the "statute") and found in Section 15.11 regarding Criminal History Records Checks in the proposed AIA Document A141-2014, *Standard Form of Agreement Between Owner and Design-Builder*, as modified by the Owner.

In accordance with the Statute, all Respondents will provide written certification to the District that (select one):

- Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined;
- Contractor and its Subcontractors of every tier are otherwise exempted from compliance with the requirement contained herein; or
- Contractor and its Subcontractors of every tier have complied with the statutory requirements of this Agreement as of this date.

Respondent agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Contractor will immediately remove the Covered Employee from Owner's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so.

I, the undersigned agent for the firm named below, certify that the information concerning criminal background checks has been reviewed by me, the following information furnished is true to the best of my knowledge and I acknowledge compliance with this section.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



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FELONY CONVICTION NOTICE - REQUIRED FORM

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

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

You must check A, B or C and sign below:

- _____ A. Our firm is a publicly held corporation, therefore, this reporting requirement is not applicable.
- _____ B. Our firm is not owned or operated by anyone who has been convicted of a felony.
- _____ C. Our firm is owned or operated by the following individual(s) who has/have been convicted of a felony.

Vendor Name: _____

Name of Individual(s): _____
(Attach additional sheets if necessary)

Details of Conviction(s): _____

(Attach additional sheets if necessary)

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

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

**CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**



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STATE ASSESSMENT CERTIFICATION - REQUIRED FORM

The undersigned authorized representative of the corporation contracting herein certifies that the following indicated statement is true and correct and that the undersigned understands making a false statement is a material breach of contract and is grounds for contract cancellation.

The corporation certifies that:

_____ It is current in Unemployment Insurance taxes, Payday and Child Labor law monetary obligations, and Proprietary School fees and assessments payable to the State of Texas.

_____ It has no outstanding Unemployment Insurance overpayment balance payable to the State of Texas.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



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REQUIRED STATE AND FEDERAL CERTIFICATIONS - REQUIRED FORM

Certification Regarding Terrorist Organizations. Pursuant to Sections 2252.151-.154 of the Texas Government Code, the Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law.

Certification Regarding Boycotting of Israel. Pursuant to Sections 2270.001-.002, 808.001-.006, .051-.057, .101-.102 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 Contractor 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 terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory

The undersigned authorized representative of the corporation contracting herein certifies that the following indicated statement is true and correct and that the undersigned understands making a false statement is a material breach of contract and is grounds for contract cancellation.

The contractor certifies that:

- _____ It is not doing business with any organization indicated on the Foreign Terrorist Organization list as so designated by the U.S. Secretary of State under Federal Law.

- _____ that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any (the "Contractor Companies"), boycotts Israel.

Certification Regarding Boycotting Energy Companies. Pursuant to Texas Government Code Chapter 2274, the Contractor hereby certifies and verifies that it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Certification Regarding Discriminating Against Firearm Industry. Pursuant to Texas Government Code Chapter 2274, the Contractor hereby certifies and verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. The verification is not required for contracts with a

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT



ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET

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sole-source provider or if the governmental entity does not receive any bids from a company that is able to provide the required verification.

The undersigned authorized representative of the corporation contracting herein certifies that the following indicated statement is true and correct and that the undersigned understands making a false statement is a material breach of contract and is grounds for contract cancellation.

The contractor certifies that:

_____ By entering into this Agreement, the Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

_____ By entering into this Agreement, the Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

**CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR
STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET**



Note: All pages must be completed by Proposers and Submitted with Final Proposal.

CONFLICT OF INTEREST QUESTIONNAIRE – FORM CIQ - REQUIRED FORM

A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the district and:

1. Has an employment or other business relationship with a local government officer of the district, or a family member of the officer, described by Local Government Code 176.003(a)(2)(A);
2. Has given a local government officer of the district, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code 176.003(a)(2)(B), excluding any gift described by Local Government Code 176.003(a-1); or
3. Has a family relationship with a local government officer of the district

The Vendor certifies that:

No conflict of interest exists

A possible or potential conflict of interest exists. Form CIQ completed (or attached) on the following page.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

A copy of the form is attached hereto and must be submitted if applicable.

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT

ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET

Note: All pages must be completed by Proposers and Submitted with Final Proposal.



CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor doing business with local governmental entity		
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY <hr/> Date Received	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>		
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of vendor doing business with the governmental entity</p>	<p style="text-align: center;">_____</p> <p style="text-align: center;">Date</p>	

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



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CERTIFICATE OF INTERESTED PARTIES - REQUIRED FORM

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The requirement above applies only to a contract of a district that:

1. Requires an action or vote by the board before the contract may be signed;
2. Has a value of at least \$1 million; or
3. Is for services that would require a person to register as a lobbyist under Government Code Chapter 305.

Gov't Code 2252.908

The disclosure requirement does not apply to a contract with:

1. A publicly traded business entity, including a wholly owned subsidiary of the entity;
2. An electric utility, as defined by Utilities Code 31.002; or
3. A gas utility, as defined by Utilities Code 121.001.

Gov't Code 2252.908(c)(4)-(6)

Filing Process: The commission has made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with Calallen ISD.

Form Availability: Certificate of Interested Parties Form is available from the Texas Ethics Commission website at the following address: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm For questions regarding and assistance in filling out this form, please contact the Texas Ethics Commission at 512-463-5800. A sample is attached hereto but must be submitted only.

The contractor certifies that:

_____ Form 1295 filing is required and a certification of filing will be provided to Calallen ISD should we be awarded the contract

_____ Form 1295 filing is not required

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



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CERTIFICATE OF INTERESTED PARTIES		FORM 1295																																							
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY																																							
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.		Must file online at www.ethics.state.tx.us/File																																							
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.																																									
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.																																									
4	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2" style="width: 35%; padding: 5px;">Name of Interested Party</th> <th rowspan="2" style="width: 25%; padding: 5px;">City, State, Country (place of business)</th> <th colspan="2" style="padding: 5px;">Nature of Interest (check applicable)</th> </tr> <tr> <th style="width: 15%; padding: 5px;">Controlling</th> <th style="width: 15%; padding: 5px;">Intermediary</th> </tr> </thead> <tbody> <tr><td style="height: 20px;"> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)		Controlling	Intermediary																																		
Name of Interested Party	City, State, Country (place of business)			Nature of Interest (check applicable)																																					
		Controlling	Intermediary																																						
5 Check only if there is NO Interested Party. <input type="checkbox"/>																																									
6 UNSWORN DECLARATION My name is _____, and my date of birth is _____. My address is _____, _____, _____, _____, _____. (street) (city) (state) (zip code) (country) I declare under penalty of perjury that the foregoing is true and correct. Executed in _____ County, State of _____, on the _____ day of _____, 20____. (month) (year) <div style="text-align: right; margin-top: 10px;"> _____ Signature of authorized agent of contracting business entity (Declarant) </div>																																									
ADD ADDITIONAL PAGES AS NECESSARY																																									

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT

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**AFFIDAVIT OF NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING -
REQUIRED FORM**

By submission of this proposal, the undersigned certifies that:

1. Neither the Respondent nor any of Respondent's officers, partners, owners, agents, representatives, employees, or parties in interest, has in any way colluded, conspired, or agreed, directly or indirectly with any person, firm, corporation or other Respondent or potential Respondent any money or other valuable consideration for assistance in procuring or attempting to procure a contract or fix the prices in the attached proposal or the proposal of any other Respondent, and further states that no such money or other reward will be hereinafter paid.
2. No attempt has been or will be made by this company's officers, employees, or agents to lobby, directly or indirectly, the Calallen ISD Board of Trustees between proposal submission date and award by the Calallen ISD Board of Trustees.
3. No officer or stockholder of the Respondent is a member of the staff or related to any employee or Board of Trustees member of the Calallen ISD except as noted on Form CIQ (Conflict of Interest Questionnaire - attached).
4. The undersigned certifies that he/she is fully informed regarding the accuracy of the statements contained in this certification, and that the penalties herein are applicable to the Respondent as well as to any person signing in his/her behalf.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT

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**ORIENTATION TO COMPLAINT PROCEDURES FOR SERVICE PROVIDERS –
REQUIRED FORM**

The policy of Calallen ISD herein referred to as “the District” is to resolve complaints in a fair and prompt manner. The Districts administrative directive on GRIEVANCE PROCEDURE establishes the guidelines for the resolution of grievances/complaints and requires this orientation sheet be received and acknowledged by all individuals or organizations providing services to the District under contract or agreement.

Acts of restraint, interference, coercion, discrimination or reprisal towards complainants exercising their rights to a file a grievance under District policy are prohibited. A complainant is the individual or organization filing a grievance/complaint. A respondent is the individual or organization against whom a grievance/complaint if filed. Inquiries regarding the resolution of grievances should be addressed to:

**Calallen Independent School District
ATTN: Blair McDavid
4205 Wildcat Dr.
Corpus Christi, Texas 78410
Telephone: (361) 242-5600**

Every effort should be made to resolve your grievance at the optimum management level. The District’s EO Officer is available to assist, as necessary, in the grievance resolution process.

The time limit to file a complaint under the District’s grievance procedure is 30 calendar days from the date of the event that leads to the filing of the grievance. A copy of the District’s Policy and Procedure is available upon request.

EQUAL OPPORTUNITY IS THE LAW

The District is prohibited from discriminating on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only. If you think that you have been subjected to discrimination, you may file a complaint within 180 days from the date of the alleged violation with the Equal Opportunity Officer at the:

**TEXAS WORKFORCE COMMISSION
WORKFORCE DEVELOPMENT DIVISION
EQUAL OPPORTUNITY OFFICE
101 E. 15th STREET
AUSTIN, TEXAS 78778
Telephones: (512) 936-0342; (TDD): 1-800-RELAY TX, Voice 1-800-RELAY VV.**

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
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CERTIFICATE OF LIABILITY - REQUIRED (Provide Copy)

Please provide a Copy of Your Certificate of Liability Insurance.

Provide actual Certificate of Liability Insurance as part of your proposal

CERTIFICATE OF LIABILITY INSURANCE		DATE				
PRODUCER SAMPLE ONLY		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE COMPANY A COMPANY B COMPANY C COMPANY D				
INSURED SAMPLE ONLY						
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO LTS	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	<input type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OWNERS PROTECTIVE LIABILITY THE STATE OF TEXAS, IT'S EMPLOYEES, NAME INSURED (SEE BELOW)				GENERAL AGGREGATE \$1,000,000.00 PRODUCTS COMP/OP AGG \$1,000,000.00 PERSONAL & ADV INJURY \$1,000,000.00 EACH OCCURRENCE \$1,000,000.00 FIRE DAMAGE (Anyone fire) \$ 50,000.00 MED EXP (Anyone person) \$ 5,000.00	
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$1,000,000.00 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$ \$	
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY-EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$	
	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ \$	
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				<input checked="" type="checkbox"/> WC STATUTORY LIMITS EL EACH ACCIDENT \$ 500,000.00 EL DISEASE-Per Policy/Limit \$ 500,000.00 EL DISEASE-Ea. Employee \$ 500,000.00	
x	<input checked="" type="checkbox"/> OTHER: BUILDERS RISK				AMOUNT OF CONTRACT	
x	<input checked="" type="checkbox"/> OWNERS PROTECTIVE LIABILITY NAMED INSURED, THE STATE OF TEXAS, IT'S EMPLOYEES					\$1,000,000.00
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (PROJECT ADDRESS) SAMPLE ONLY						
CERTIFICATE HOLDER TEXAS WORKFORCE COMMISSION 101 East 15 th Street, Room 226T Austin, Texas 78778-0001				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE		

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
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W9 TAXPAYER IDENTIFICATION CERTIFICATION - REQUIRED FORM

Provide a completed IRS Form W-9 as part of your proposal – available at <https://www.irs.gov/forms-pubs/about-form-w-9>.

Form W-9 (Rev. January 2011) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give Form to the requester. Do not send to the IRS.
Name (as shown on your income tax return) _____		
Business name/disregarded entity name, if different from above _____		
Print or type See Specific Instructions on page 2.	Check appropriate box for federal tax classification (required): <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C-C corporation, S-S corporation, P-partnership) ▶ _____	
	<input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
Address (number, street, and apt. or suite no.) _____		Requestor's name and address (optional) _____
City, state, and ZIP code _____		
List account number(s) here (optional) _____		
Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3. Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.		
		Social security number [] [] [] - [] [] [] - [] [] [] []
		Employer identification number [] [] [] [] - [] [] [] [] [] [] [] []
Part II Certification Under penalties of perjury, I certify that:		
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and		
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and		
3. I am a U.S. citizen or other U.S. person (defined below).		
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.		
Sign Here	Signature of U.S. person ▶ _____ Date ▶ _____	
General Instructions Section references are to the Internal Revenue Code unless otherwise noted.		
Purpose of Form A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:		
1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued), 2. Certify that you are not subject to backup withholding, or 3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.		
Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9. Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are: • An individual who is a U.S. citizen or U.S. resident alien, • A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, • An estate (other than a foreign estate), or • A domestic trust (as defined in Regulations section 301.7701-7). Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.		

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
ATTACHMENT A - PROCUREMENT PROPOSAL RESPONSE PACKET



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PAYMENT AND PERFORMANCE BONDS - REQUIRED FORM

A district that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the district:

1. A performance bond if the contract is in excess of \$100,000; and
2. A payment bond if the contract is in excess of \$25,000.

A bond required by this provision must be executed by a corporate surety in accordance with Insurance Code Article 7.19-1 (now Insurance Code 3503.001-.005). A bond for a public work contract with a district must be payable to and its form must be approved by the awarding board. *Gov't Code 2253.021(a), (d)-(e).*

The performance bond is solely for the protection of the district awarding the public work contract, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. *Gov't Code 2253.021(b).*

The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract. *Gov't Code 2253.021(c).*

The contractor certifies that:

_____ A performance bond is required and will be provided to Calallen ISD should we be awarded the contract

_____ A performance bond is not required

_____ A payment bond is required and will be provided to Calallen ISD should we be awarded the contract

_____ A payment bond is not required

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

CALLEN ISD INFORMAL RFP FOR DESIGN-BUILD SERVICE FOR STADIUM SCOREBOARD AND SOUND SYSTEM IMPROVEMENTS PROJECT
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PREVAILING WAGE SCHEDULES - REQUIRED FORM

Respondents are required to comply with Texas Government Code, Chapter 2258 Prevailing Wage Rates, with respect to payment of prevailing wage rates for the construction or improvements, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction. A worker is employed on a public work if the worker is employed by the Respondent or any subcontractor in the execution of the contract for the project.

The District has adopted the federal Davis-Bacon wage rates for the use in Texas pursuant to and in accordance with the Texas Government Code, Section 2258.022. The District's prevailing wage rate is provided as Exhibit C to APPENDIX 1 the STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER, AIA DOCUMENT A141-2014 .

Please sign below confirming receipt of the District's current Prevailing Wage Rate Schedule. Contractor will be required to pay these wages as set out in the form of Agreement.

Authorized Representative (Print Name)

Title

Authorized Representative (Signature)

Date

APPENDIX A

DISTRICT PROVIDED PLANS, PRINTS, SPECIFICATIONS, CONCEPTUAL DRAWINGS AND GEOTECHNICAL REPORT

PLEASE NOTE – The Drawings, Plans, and Prints enclosed **are not As-Builts**. Each Proposer, before submitting their Proposal, shall fully examine and acquaint themselves with the Contract Documents and the sites of the proposed Project. Offeror shall make such investigations as they may deem necessary to fully inform themselves of the existing conditions, facilities, difficulties, restrictions, and requirements incident to completion of the Project under the terms of the Contract.

CALLEN ISD
HIGH SCHOOL STADIUM SCOREBOARD



Existing scoreboard is to be replaced with modern video display and integrated stadium speaker system.

CONCEPTUAL DESIGN

SCOREBOARD

ID DISPLAY

Non-lit Custom Arch 46' wide
PHIL DANAHER STADIUM
 3' Non-lit Channel Letters
 Overall Display structure must conform to 155mph windstorm code for the City of Corpus Christi.

SOUND DISPLAY

Scoreboard must have an integrated stadium wide sound system managed by an audio/video controller console located in the new press box.

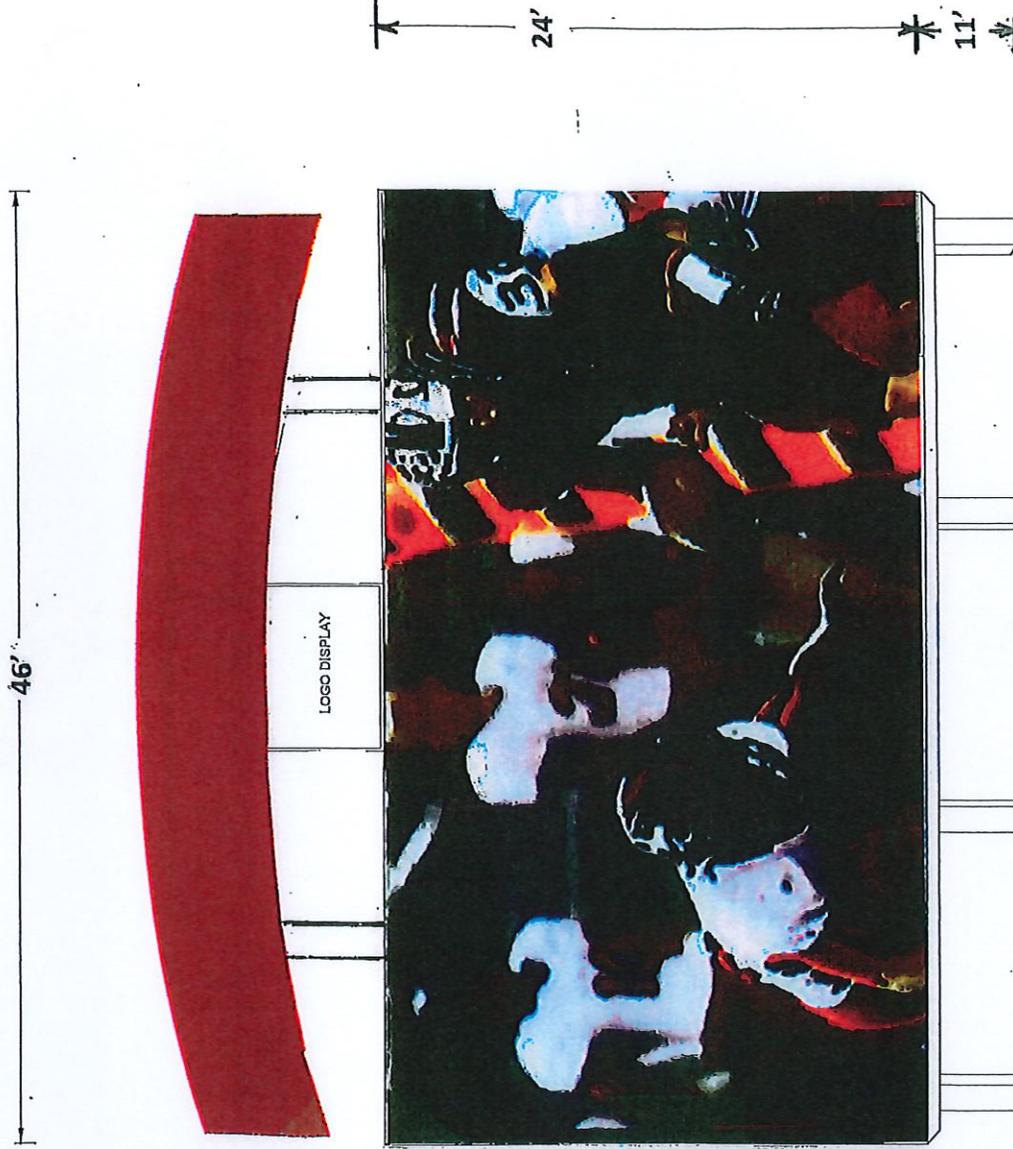
Sound system must be able to provide audio & sound capacity at multiple field level points for game time and postgame broadcasts.

VIDEO DISPLAY

One video display with screen size approximately 24' tall x 46' wide. Display is to be eleven (11') above ground level.

MODULAR DISPLAY

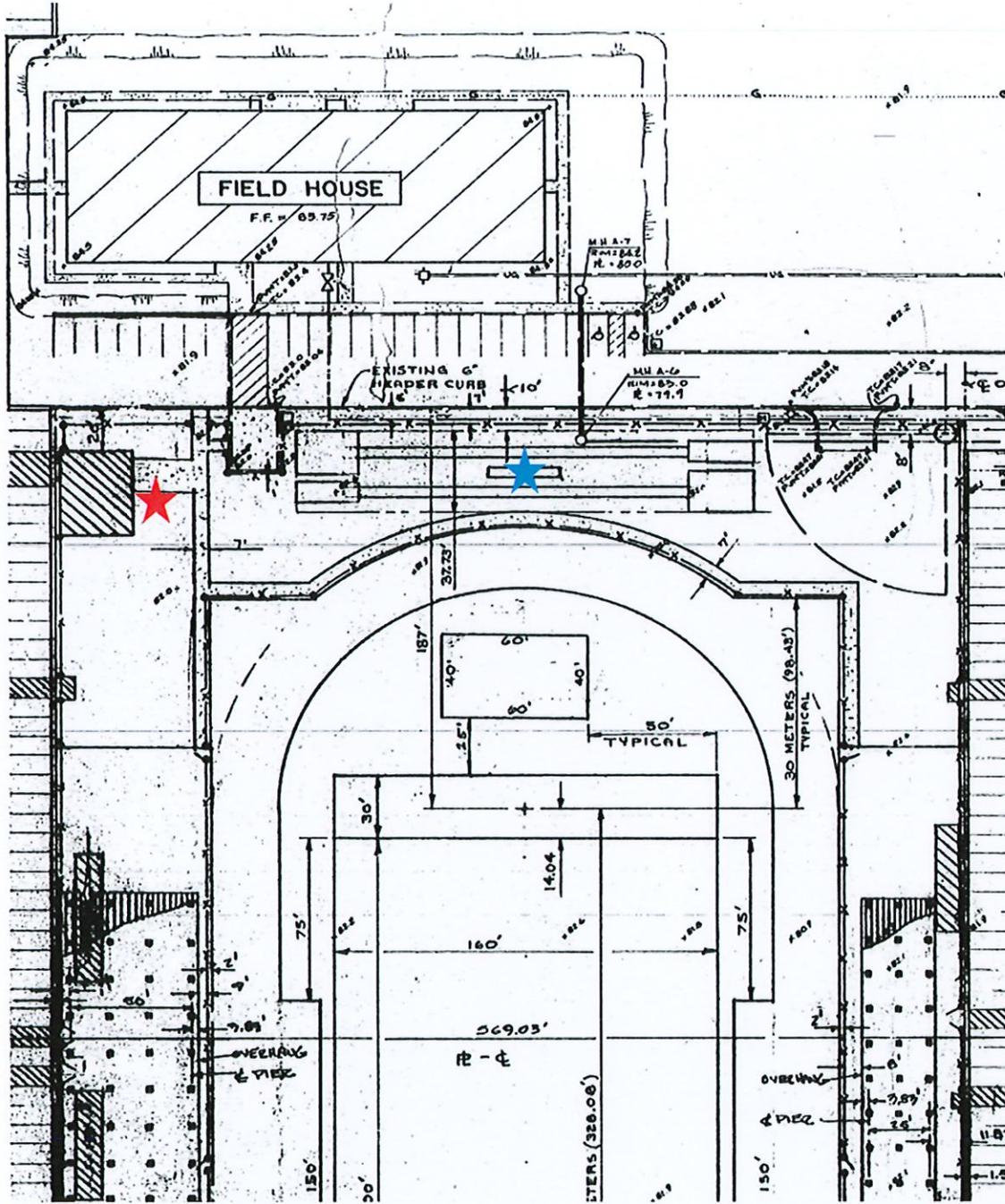
Display will have a modular design with score, game clock, quarter, down & distance.



CALLEN ISD
STADIUM MAIN ELECTRICAL DISTRIBUTION PANEL



CALLEN ISD
HIGH SCHOOL STADIUM SITE PLAN



- ★ Main Electrical Distribution Panel is located on the east side of the stadium storage building. It is approximately 200' from the existing scoreboard which is to be replaced.
- ★ Current position of the stadium scoreboard



- GEOTECHNICAL ENGINEERING
- MATERIALS ENGINEERING & TESTING
- SOILS • ASPHALT • CONCRETE

GEOTECHNICAL SUBSURFACE INVESTIGATION,
LABORATORY TESTING PROGRAM, AND
FOUNDATION RECOMMENDATIONS
FOR THE PROPOSED
CALLEN INDEPENDENT SCHOOL DISTRICT
STADIUM STORAGE BUILDING ADDITION AND NEW SCOREBOARD
4205 WILDCAT DRIVE
CORPUS CHRISTI, TEXAS

RETL REPORT NUMBER: G118421

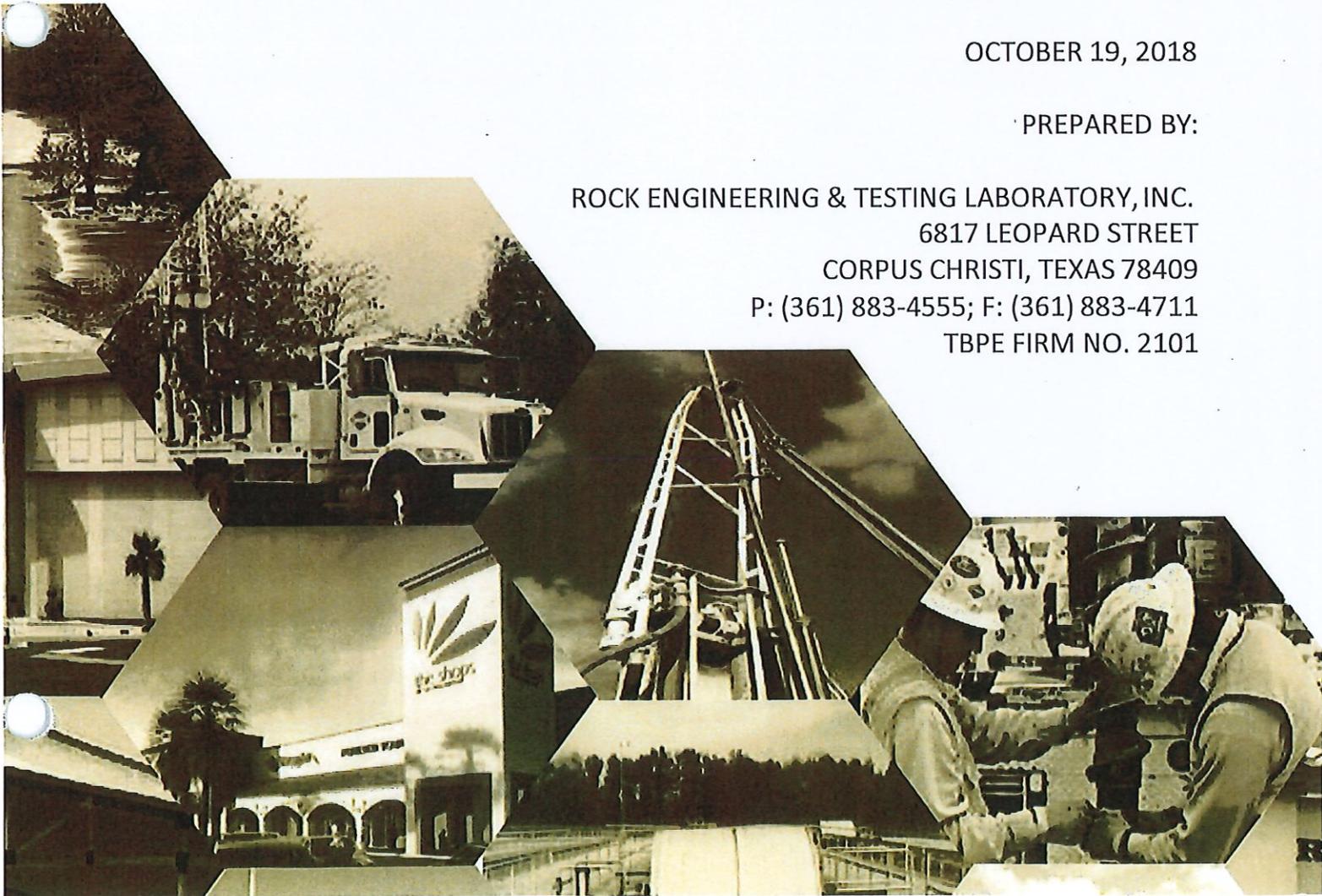
PREPARED FOR:

CALLEN INDEPENDENT SCHOOL DISTRICT
4205 WILDCAT DRIVE
CORPUS CHRISTI, TEXAS 78071

OCTOBER 19, 2018

PREPARED BY:

ROCK ENGINEERING & TESTING LABORATORY, INC.
6817 LEOPARD STREET
CORPUS CHRISTI, TEXAS 78409
P: (361) 883-4555; F: (361) 883-4711
TBPE FIRM NO. 2101





- GEOTECHNICAL ENGINEERING
- CONSTRUCTION MATERIALS
ENGINEERING & TESTING
- SOILS • ASPHALT • CONCRETE

October 19, 2018

Calallen Independent School District
4205 Wildcat Drive
Corpus Christi, Texas 78410

Attention: Mr. Blair McDavid

**SUBJECT: SUBSURFACE INVESTIGATION, LABORATORY TESTING PROGRAM, AND
FOUNDATION RECOMMENDATIONS
FOR THE PROPOSED
CALALLEN INDEPENDENT SCHOOL DISTRICT
STADIUM STORAGE BUILDING ADDITION AND NEW SCOREBOARD
4205 Wildcat Drive
Corpus Christi, Texas
RETL Job No. – G118421**

Dear Mr. McDavid,

In accordance with our agreement, we have conducted a subsurface investigation, laboratory testing program, and foundation evaluation for the above referenced project. The results of this investigation, together with our recommendations, are to be found in the accompanying report, one electronic copy of which is being transmitted herewith for your records and distribution to the design team.

Often, because of design and construction details that occur on a project, questions arise concerning soil conditions, and Rock Engineering and Testing Laboratory, Inc. (RETL), Texas Professional Engineering Firm No. – 2101, would be pleased to continue its role as Geotechnical Engineer during the project implementation.

RETL also has great interest in providing materials testing and observation services during the construction phase of this project. If you will advise us of the appropriate time to discuss these engineering services, we will be pleased to meet with you at your convenience. If you have any questions, or if we can be of further assistance, please contact us at (361) 883-4555.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark C. Rock", is written over the typed name.

Mark C. Rock, P.E.

Vice President of Operations

ROCK ENGINEERING & TESTING LABORATORY, INC.

www.rocktesting.com

6817 LEOPARD STREET • CORPUS CHRISTI, TEXAS 78409-1703
OFFICE: (361) 883-4555 • FAX: (361) 883-4711

10856 VANDALE ST. • SAN ANTONIO, TEXAS 78216-3625
OFFICE: (210) 495-8000 • FAX: (210) 495-8015

No.1 ROUNDVILLE LANE • ROUND ROCK, TEXAS 78664
OFFICE: (512) 284-8022 • FAX: (512) 284-7764

SUBSURFACE INVESTIGATION, LABORATORY TESTING PROGRAM, AND
FOUNDATION RECOMMENDATIONS
FOR THE PROPOSED
CALALLEN INDEPENDENT SCHOOL DISTRICT
STADIUM STORAGE BUILDING ADDITION AND NEW SCOREBOARD
4205 WILDCAT DRIVE
CORPUS CHRISTI, TEXAS

RETL JOB NUMBER: G118421

PREPARED FOR:

CALALLEN INDEPENDENT SCHOOL DISTRICT
4205 WILDCAT DRIVE
CORPUS CHRISTI, TEXAS 78071

OCTOBER 19, 2018

PREPARED BY:

ROCK ENGINEERING AND TESTING LABORATORY, INC.
6817 LEOPARD STREET
CORPUS CHRISTI, TEXAS 78409
PHONE: (361) 883-4555; FAX: (361) 883-4711

TEXAS PROFESSIONAL ENGINEERING FIRM NO. 2101




J.R. Eichelberger, III, P.E.
Senior Project Engineer
Cell: 210 355 2754


Mark C. Rock, P.E.
Vice President of Operations
Cell: 361 438 8755



TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Authorization	1
Purpose and Scope.....	1
General	1
DESCRIPTION OF SITE	2
FIELD EXPLORATION.....	2
Scope.....	2
Drilling and Sampling Procedures	3
Field Tests and Observations.....	3
LABORATORY TESTING PROGRAM.....	4
SUBSURFACE CONDITIONS.....	4
General	4
Soil Conditions	4
Seismic Site Class	5
Groundwater Observations	5
FOUNDATION DISCUSSION.....	6
Project Description	6
PVR Discussion	6
FOUNDATION TYPES CONSIDERED.....	7
FOUNDATION RECOMMENDATIONS	8
Slab-on-Grade Foundation Recommendations (Storage Building Addition).....	8
Conventional Spread Footings (Proposed Scoreboard).....	9
Drilled Pier Foundation Recommendations (Proposed Scoreboard).....	10
Lateral Pier Analysis	11
SITE IMPROVEMENT METHODS.....	11
Concrete Flatwork Construction Considerations.....	11
CONSTRUCTION CONSIDERATIONS	13
Site Preparation	13
Select Fill	13
Drilled Pier Installation Considerations	13
Earthwork and Foundation Acceptance.....	14
Vapor Retarder	15
Utilities	15
Addition and Control Joints	15
GENERAL COMMENTS	16
APPENDIX	
Boring Location Plan	
Boring Logs B-1 and B-2	
Key to Soil Classifications and Symbols	

INTRODUCTION

This report presents the results of a subsurface investigation, laboratory testing program, and provision of foundation recommendations for the proposed stadium storage building addition and new scoreboard to be constructed at 4205 Wildcat Drive located in Corpus Christi, Texas.

Authorization

The work for this project was performed in accordance with RETL proposal number P092518A dated September 25, 2018. The proposal was approved by Edith George on September 25, 2018 and sent to RETL via e-mail.

Purpose and Scope

The purpose of this exploration was to evaluate the soil and groundwater conditions at the site and to provide foundation recommendations suitable for the proposed project.

The scope of the exploration and analysis included the subsurface exploration, field and laboratory testing, engineering analysis and evaluation of the subsurface soils, provision of foundation recommendations, and preparation of this report.

The scope of services did not include an environmental assessment. Any statements in this report, or on the boring logs, regarding odors, colors, unusual or suspicious items or conditions are strictly for the information of the client.

General

The exploration and analysis of the subsurface conditions reported herein are considered sufficient in detail and scope to provide foundation recommendations for the proposed project. The information submitted for the proposed project is based on preliminary project details provided by Calallen ISD, and the soil information obtained at the boring locations. If the designers require additional soil parameters to complete the design of the proposed foundation systems and this information can be obtained from the soil data and laboratory tests performed within the scope of work included in our proposal for this project, RETL will provide the additional information requested as a supplement to this report.

The Geotechnical Engineer states that the findings, recommendations, specifications or professional advice contained herein have been presented after being prepared in a manner consistent with that level of care and skill ordinarily exercised by reputable members of the Geotechnical Engineer's profession practicing contemporaneously under similar conditions in the locality of the project. RETL operates in general accordance with "*Standard Practice for Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction*", (ASTM D3740). No other representations are expressed or implied, and no warranty or guarantee is included or intended.

This geotechnical investigation and foundation recommendations have been prepared for the exclusive use of Calallen ISD for the proposed stadium storage building addition and new scoreboard to be constructed at 4205 Wildcat Drive located in Corpus Christi, Texas.

DESCRIPTION OF SITE

The site of the proposed improvements are located at the north end of the existing Calallen High School football field and track at 4205 Wildcat Drive located in Corpus Christi, Texas. The surface of the site at the boring locations are covered with grass. Existing structures including scoreboard, running track, football field and other miscellaneous buildings were observed at the site. In addition, evidence of underground utilities were observed at the site. The ground surface was relatively firm at the time of our field investigation and did not pose any significant difficulties to the drill crew moving their equipment around the site.

FIELD EXPLORATION

Scope

The field exploration, to evaluate the engineering characteristics of the subsurface materials, included reconnaissance of the project site, performing the boring operations and obtaining disturbed split spoon samples and relatively undisturbed Shelby tube samples. During the sample recovery operations, the soils encountered were classified and recorded on the boring logs in accordance with "Standard Guide for Field Logging of Subsurface Exploration of Soil and Rock, (ASTM D5434)."

Two borings were performed at this site for the purpose of providing geotechnical information. The table below provides the boring identification, boring depth, and GPS coordinates at the boring locations:

SUMMARY OF BORING INFORMATION			
Boring	Depth (ft)	Proposed Structure	GPS Coordinates
B-1	15	Storage Building Addition	N 27.85852° W 97.63869°
B-2	30	Scoreboard	N 27.85853° W 97.63820°

The GPS coordinates were obtained at the boring locations using a commercially available GPS and are provided in this report and on the boring logs. RETL determined the scope of the field work, staked the boring locations in the field and performed the drilling operations. Upon completion of the drilling operations and obtaining the groundwater observations, the drill holes were backfilled with excavated soil and the site cleaned as required. A Boring Location Plan is provided in the Appendix.

The borings performed for this project were used to determine the classification and strengths of the subgrade soils. This information is provided on the boring logs and includes boring locations, boring depths, soil classifications, soil strengths, and laboratory test results. The boring logs are included in the Appendix.

Drilling and Sampling Procedures

The test borings were performed using a drilling rig equipped with a rotary head turning hollow stem augers to advance the boreholes. Disturbed soil samples were obtained using split-barrel sampling procedures in general accordance with the procedures for, "*Penetration Test and Split-Barrel Sampling of Soils*, (ASTM D1586)." Relatively undisturbed Shelby tube soil samples were obtained using thin-wall tube sampling procedures in accordance with, "*Thin Walled Tube Sampling of Soils*, (ASTM D1587)." The samples obtained by this procedure were extruded by a hydraulic ram and classified in the field.

The samples were placed in plastic bags, marked according to boring number, depth and any other pertinent field data, stored in special containers and delivered to the laboratory for testing.

Field Tests and Observations

Standard Penetration Tests (SPT) – During the sampling procedures, SPT were performed to obtain the standard penetration value of the soil at selected intervals. The standard penetration value (N) is defined as the number of blows of a 140-pound hammer, falling 30-inches, required to advance the split-barrel sampler 1-foot into the soil. The sampler is lowered to the bottom of the previously cleaned drill hole and advanced by blows from the hammer. The number of blows is recorded for each of three successive 6-inch penetrations. The "N" value is obtained by adding the second and third 6-inch increment number of blows. The results of standard penetration tests indicate the relative density of cohesionless soils and comparative consistency of cohesive soils, thereby providing a basis for estimating the relative strength and compressibility of the soil profile components.

Water Level Observations - Water level observations were obtained during the test boring operations and are noted on the boring logs provided in the Appendix. In relatively pervious soils, such as sandy soils, the indicated depths are usually reliable groundwater levels. In relatively impervious soils, a suitable estimate of the groundwater depth may not be possible, even after several days of observation. Seasonal variations, temperature, land-use, proximity to a creek, river or lake and recent rainfall conditions may influence the depth to the groundwater. The amount of water in open boreholes largely depends on the permeability of the soils encountered at the boring locations.

Ground Surface Elevations - The ground surface elevations were not provided at the boring locations. Therefore, the depths referred to in this report are from the actual ground surface at the boring locations during the time of our field investigation.

LABORATORY TESTING PROGRAM

In addition to the field investigation, a laboratory testing program was conducted to determine additional pertinent engineering characteristics of the subsurface materials necessary in analyzing the behavior of the foundation and pavement system for the proposed project.

The laboratory testing program included supplementary visual classification (ASTM D2487) and water content tests (ASTM D2216) on the samples. In addition, selected samples were subjected to Atterberg limits tests (ASTM D4318) and percent material finer than the #200 sieve tests (ASTM D1140).

The shear strength of selected cohesive soil samples was evaluated from unconfined compressive strength tests (ASTM D2166). Estimated soil strengths were obtained using a hand penetrometer.

The laboratory testing program was conducted in general accordance with applicable ASTM Specifications. The results of these tests are to be found on the accompanying boring logs provided in the Appendix.

SUBSURFACE CONDITIONS

General

The types of foundation bearing materials encountered in the test borings have been visually classified and are described in detail on the boring logs. The results of the standard penetration tests, strength tests, water level observations and other laboratory tests are presented on the boring logs in numerical form. Representative samples of the soils were placed in polyethylene bags and are now stored in the laboratory for further analysis, if desired. Unless notified to the contrary, all samples will be disposed of three months after issuance of this report.

The stratification of the soil, as shown on the boring logs, represents the soil conditions at the actual boring locations. Variations may occur between, or beyond, the boring locations. Lines of demarcation represent the approximate boundary between different soil types, but the transition may be gradual, or not clearly defined.

It should be noted that, whereas the test borings were drilled and sampled by experienced drillers, it is sometimes difficult to record changes in stratification within narrow limits. In the absence of foreign substances, it is also difficult to distinguish between discolored soils and clean soil fill.

Soil Conditions

The soil conditions encountered in the test borings performed for this project have been summarized and soil properties including soil classification, plasticity, strength, effective unit weight, percent passing the No. 200 sieve, range of SPT results, and range of pocket penetrometer results are provided in the following table:

Soil Profile Table

D	Generalized Soil Description	LL	PI	C	ϕ	γ_e	-#200	N	PP
0-3	Lean CLAY & CLAYEY Sand	---	---	850	0	115	---	7	---
3-19	Fat/Lean CLAY	38-53	25-35	3,100	0	120	57-75	---	2.5-4.5+
19-30	Silty SAND	---	---	0	32	115	14	13-24	---

Where:

- D = Depth in feet below existing grade
- LL = Liquid limit (%)
- PI = Plasticity index
- C = Soil Cohesion, psf (undrained)
- ϕ = Angle of Internal Friction, deg. (undrained)
- γ_e = Effective soil unit weight, pcf
- #200 = Percent of soils passing the #200 sieve
- N = Standard Penetration Test (blows per foot)
- PP = Pocket penetrometer value range, tsf

Detailed descriptions of the soils encountered at the boring locations are provided on the boring logs included in the Appendix.

Seismic Site Classification

The site soil shall be classified based on the upper 100 feet of the site profile. Where site-specific data are not available to a depth of 100 ft. appropriate soils properties are permitted to be estimated by the registered design professional preparing the soil investigation report based on known geologic conditions. Where the soils properties are not known in sufficient detail to determine the site class, Site Class D shall be used unless the authority having jurisdiction or geotechnical data determined Site Class E or F soils are present at the site. It is RETL's opinion that given the limits of the site investigation and the guidelines dictated above, that the Seismic Site Class D should be utilized for structural design at this site.

Groundwater Observations

Groundwater was not encountered during drilling nor was groundwater observed in the borings upon completion of the drilling operations. In addition, field observations indicated that the borings were open to their termination depths upon completion of the drilling operations. Therefore, based on observations made in the field and moisture contents obtained in the laboratory, it appears that groundwater at the time of our field investigation will be encountered at a depth greater than 30-feet, the deepest boring termination depth performed at this site for this project. It should be noted that the water levels in open boreholes may require several hours to several days to stabilize depending on the permeability of the soils and that groundwater levels at this site may be subject to seasonal conditions, recent rainfall, drought or temperature effects.

FOUNDATION DISCUSSION

Project Description

The project at this site includes a stadium storage building addition and new scoreboard to be constructed at 4205 Wildcat Drive located in Corpus Christi, Texas.

The stadium storage building addition will be on the order of 1,200 square feet. It is not known what type of foundation is supporting the existing structure. Generally it is recommended when building an addition to an existing structure to support the proposed addition utilizing the same type of foundation as the existing structure if the existing structure is performing adequately. It is imperative that RETL is provided the type of foundation supporting the existing structure. For the purposes of this report it is assumed that the existing storage building is supported on shallow slab on grade type foundation system.

PVR Discussion

The laboratory test results indicate that the subsoils in the active zone at this site are moderate to high in plasticity. **The maximum calculated total potential vertical rise (PVR) at this site is on the order of 2 to 2 ¼-inches.** The PVR was calculated using the Texas Department of Transportation Method TEX-124E and took into account the depth of the active zone, estimated to extend to a depth of approximately 10 to 11-feet, and the Atterberg limits test results of the soils encountered within the active zone.

The estimated PVR values provided are based on the floor system applying a sustained surcharge load of approximately 1.0 pound per square inch on the subgrade soils. The value represents the vertical rise that can be experienced by dry subsoils if they are subjected to conditions that allow them to become saturated, such as poor drainage. The actual movement of the subsoils is dependent upon their change in moisture content.

Differential vertical movements can potentially be equal to the expected total movements. Differential vertical movements at this site equal to the calculated PVR over a distance equal to the depth of the active zone, within the footprint of a slab-on-grade if dry soil conditions exist and a localized water source such as ponding water or a plumbing leak occurs resulting in non-uniform moisture conditions.

Undercutting the natural expansive soils at this site and replacing them with properly compacted select fill soils should reduce the PVR. The resulting reduction in PVR at this site, utilizing undercutting and replacement operations, are included in the following table:

Required Undercut Depth (ft)	Select Fill Thickness (ft)	Calculated PVR (in)
1	1	1.5
2	2	1.2
3	3	1.0

Based on our calculations, in order to reduce the PVR to approximately 1-inch, it will be necessary to remove the expansive soils to a depth of 3-feet, moisture condition and compact the exposed subgrade soils, and place a minimum of 3-feet of properly compacted select fill soils in the excavation. As previously noted fill soils were encountered in the upper 3-feet at this site.

Additional undercutting and replacement may be required to further reduce the PVR based on architectural or structural design considerations or if the finished concrete floor slab elevation is something other than approximately ½ to 1-foot above the average existing grade at the site. If the finished floor slab elevation is something other than the assumed ½ to 1-foot above the average existing grade at the site, RETL should be given the opportunity to revisit the recommendations provided herein to determine if supplemental recommendations are warranted.

FOUNDATION TYPES CONSIDERED

Various foundation types have been considered for the support of the proposed structures. The foundation types considered most appropriate for the proposed addition to the existing storage building is a slab-on-grade foundation, assuming the existing structure is supported using a shallow foundation and is performing adequately. This types of foundations is described below:

Slab-on-Grade Foundations (Storage Building Addition) – A stiffened grid type beam and slab foundation is used to support relatively light structures on expansive soils where the soil conditions are relatively uniform, and where uplift and settlement can be tolerated. The intent of a stiffened slab-on-grade foundation is to allow the structure and foundation to move up and down freely with soil movements while providing sufficient stiffness to limit differential movements within the superstructure. A slab-on-grade foundation system is suitable for use at this site to support the proposed structure. A conventionally reinforced slab-on-grade foundation system is typically the most economical foundation system utilized to support a relatively light structure that can withstand some soil movements. Movements experienced by a shallow foundation at this site could be related to soil swelling (heave) conditions resulting in differential movements. Differential movements, even as small as 1-inch, can result in unsightly cracking of interior and exterior architectural facades and rigid brick or CMU block walls.

A shallow slab-on-grade foundation is an acceptable foundation to support the proposed storage building addition provided the site improvement earthwork recommendations included in the “PVR Discussion” and “Site Preparation” sections of this report are performed.

If it essential to demand the highest level of performance from the foundation, then RETL recommends utilizing a deep foundation system in conjunction with a structural floor slab.

Scoreboard Foundation System - Various foundation types have been considered for the support of the proposed scoreboard. The governing design criteria is likely lateral wind loads, therefore overturning would be the primary concern. The foundation types considered most appropriate for this type of loading conditions is either conventional spread footings or deep straight shaft drilled piers. It appears that deep straight shaft drilled piers can be installed at the site of the proposed scoreboard without the use of temporary steel casing making their use for this application an economical option.

In addition to overturning, the moderate plastic clay soils at this site will likely shrink and swell with changes in moisture content that could either result in light poles utilizing spread footings being out of plumb or the clay soils can impart uplift loads on the pier and could attempt to pull the piers out of the ground. Therefore the foundations will not only need to resist the lateral wind loads but also be designed to be founded on stable soils to resist the negative impact of the moderately to highly plastic clay soils at this site.

Recommendations for a spread footings and straight shaft drilled piers will be provided in this report to support the proposed scoreboard.

FOUNDATION RECOMMENDATIONS

Slab-on-Grade Foundation Recommendations (Storage Building Addition)

A monolithic stiffened grid type beam and slab-on-grade foundation is feasible to support the proposed storage building addition planned for construction at this site if foundation movements of approximately 1-inch can be tolerated. The PVR shall be reduced to approximately 1-inch by performing the recommended site improvements in the "**PVR Discussion**" and "**Site Preparation**" sections of this report. It should be noted that rigid exterior walls and interior partitions are subject to distress with the slightest soil related foundation movements, even differential movements as small as 1-inch.

Interior and exterior grade beams should be founded within properly compacted select fill at a minimum depth of 2 or 2½-feet, respectively, below the finished floor slab elevation. Interior and exterior grade beams founded as recommended above can be designed for a net allowable unit soil bearing pressure of **2,000 psf**. The net allowable unit soil bearing pressure provided utilizes a safety factor of 3.0. Concentrated loads should be placed at widened grade beam locations, at intersection of grade beams or where haunches can be constructed if loading conditions warrant increased bearing area.

The beams should be a minimum of 12-inches wide to reduce the potential for localized shear failure and the beams should be spaced a maximum of 18-feet apart, in both directions. The Structural Engineer may vary beam depths and spacing based on experience designing and constructing similar type structures on sites with similar subsurface soil conditions.

The "*Design of Slab-On-Ground Foundations*," published by the Wire Reinforcement Institute, Inc. (Aug., 1981), utilizes the design criteria provided in the table below:

WRI Design Criteria	
Climatic Rating (Cw)	17
Effective Plasticity Index	26
Soil/Climatic Rating Factor (1-C)	0.12
Maximum Beam Spacing In Both Directions (ft)	18

WRI slab design criteria provided above takes into account that a minimum of 3-feet of the existing soils, organics and other deleterious materials are removed from the building site and extending out a minimum of 5-feet outside the footprint of the proposed structure, including all appurtenances, the exposed subgrade soils are moisture conditioned and compacted and a minimum of 3-feet of properly compacted select fill soils are placed into the excavation to achieve a finished concrete floor slab elevation at least ½ to 1-foot above the average existing grade at the site in order to reduce the PVR to approximately 1-inch.

A soil supported floor slab is subject to vertical movements, as discussed earlier in this report. Even slight differential movements on the order of 1-inch can cause distress to interior wall partitions and rigid exterior walls or facades supported by a shallow slab-on-grade foundation, resulting in cosmetic damage. This amount of movement should be understood and addressed during the design phase of the proposed structure planned for construction at this site.

Conventional Spread Footings (Proposed Scoreboard)

Conventional spread footings are suitable to support the lightly loaded scoreboard subject to high lateral loads. The foundation should be founded at a minimum depth of 4-feet below the existing grade and can be designed for an **allowable unit bearing pressure of 3,000 psf for dead load and sustained live loads with a safety factor of 3.0.**

Footings designed using the net allowable unit soil pressures provided could expect total settlements to be approximately 1-inch and differential settlements to be approximately ½-inch. The allowable unit soil pressures may be increased by one-third for maximum transient loads, such as wind loads.

The footing geometry and the weight of the footing and the soil above the footing will resist the lateral loads. For stability calculations the weight of concrete can be taken as 150 pounds per cubic feet and the weight of soil can be taken as 120 pounds per cubic feet, if storm conditions resulting in high water tables is to be considered than the buoyant force will result in 90 pounds per cubic feet and 60 pounds per cubic feet, respectively.

In order to minimize the effects of any slight differential movement that may occur due to variations in the character of the supporting soils, it is recommended that all footings be suitably reinforced to make them as rigid as possible.

In areas where a spread footing will be constructed, soil and all loose or excessively organic materials shall be removed to the depth required to achieve the desired bearing pressure. Foundation excavations may be neat cut with conventional excavation equipment, preferably with a smooth-mouthed bucket. If a toothed bucket is used, excavation with this equipment should be stopped 12-inches above the final grade and the foundation excavation completed with a smooth-mouthed bucket or by hand labor. The exposed subgrade soils at the footing bearing depth shall be compacted to a minimum density of 95-percent of the maximum dry density as determined by the standard Proctor test (ASTM D698) and the moisture content shall be maintained at, or above, the optimum moisture content. The smooth firm properly compacted footing bearing surface shall be protected with a lean concrete to prevent excessive wetting and desiccation of the subgrade soils and to provide a stable subgrade during placement of reinforcing steel.

"Select Fill" shall be utilized as backfill above and around the footing and shall be compacted to a minimum density of 95-percent of the maximum dry density as determined by the standard Proctor test (ASTM D698) and the moisture content shall be maintained at, or above, the optimum moisture content.

Footing construction should be completed, including the placement of concrete in one day, if the concrete cannot be placed in one-day then a lean concrete seal slab shall be placed to protect the footing bearing surface from desiccation of excessive wetting.

Drilled Pier Foundation Recommendations (Proposed Scoreboard)

Straight shaft drilled piers can be utilized at this site to support the proposed scoreboard structure subject to high lateral loads. The structural designer can utilize the allowable unit skin friction values for the range in depth included in the following table for straight shaft drilled piers to resist the axial loads given the strengths of the subsurface soils encountered:

ALLOWABLE UNIT SKIN FRICTION VALUES	
Depth (ft)	Allowable Unit Skin Friction (psf)
0-5	Neglect
5-27	850

The allowable unit skin friction values provided above are based on the strengths of the in-situ soils and utilize a safety factor of 2 to prevent shear failure. The minimum depth below the ground surface for deep foundations at this site required to resist swell uplift forces due to the presence of moderate to highly plastic clay soils, assuming a minimum gravity load of 25 kips, is 15-feet and the maximum termination elevation for straight shaft drilled piers is 27-feet. If the minimum load on any pier is less than 25-kips, RETL should be given the opportunity to revisit the minimum depth recommendations for straight shaft drilled piers at this site. Resistance to uplift can be calculated by taking 60-percent of the axial capacity of a straight shaft drilled pier.

A properly designed and constructed straight shaft drilled pier can be expected to experience settlement on the order of 1-percent of the shaft diameter of the pier. Equally loaded same size drilled shafts should experience differential settlements on the order of 0.5-percent of the pier shaft diameters.

Straight shaft drilled piers should be spaced no closer than three pier diameters apart measured center to center. Drilled piers at this site should be adequately reinforced with a minimum of 1 percent of the cross-sectional area of the pier shaft throughout the depth of the pier to withstand uplift forces.

Lateral Pier Analysis

The proposed scoreboard will be subject to lateral loads due to the design wind speeds. It is likely that the lateral load condition will govern design. Lateral pier analysis programs such as L-pile will require the following soil design parameters based on the generalized soil conditions for this site to resist lateral loads:

Lateral Analysis Parameters

D	GENERALIZED SOIL DESCRIPTION	C	ϕ	γ_e	K	E_{50}
0-5	Neglect	---	---	115	---	---
5-10	CLAY	3,100	0	120	1000	0.005
24-27	SAND	0	32	115	90	---

- Where: D = depth (ft)
 γ_e = effective unit weight, pcf
 C = shear strength, psf
 ϕ = angle of internal friction, deg.
 K = modulus of subgrade reaction (pci)
 E_{50} = 50% strain value

E_{50} values were estimated from known correlations. The upper 5-feet of soil below the pile head shall be neglected depending on the depth of the pile head below the ground surface.

SITE IMPROVEMENT METHODS

Concrete Flatwork Construction Considerations

The change in moisture content of the plastic clay soils is the primary mechanism resulting in the volumetric changes of the supporting soils. Provisions in the site development should be made in order to maintain relatively uniform moisture contents of the supporting soils. A number of measures may be used to attain a reduction in subsoil moisture content variations, thus reducing the soil's shrink/swell volume change potential. Some of these measures are outlined below:

- During construction, positive drainage schemes should be implemented to prevent ponding of water on the subgrade.
- Positive drainage should be maintained around the structure and flatwork through roof/gutter systems connected to piping or directed to paved surfaces, transmitting water away from the foundation perimeter and flatwork. In addition, positive grades sloping away from the foundation and flatwork should be designed and implemented. We recommend that effective site drainage plans be devised by others prior to commencement of construction to provide positive drainage away from the site improvements and off the site, both during, and after construction.
- The top 2-feet of utility trenches should be backfilled with low plasticity clays and clay plugs shall be constructed for the full depth of the utility trenches at the limits of the select fill pad to assure the trenches do not serve as aqueducts that could transport water beneath the structure and flatwork due to excessive surface water infiltration.
- Vegetation placed in landscape beds that are adjacent to the structure and flatwork should be limited to plants and shrubs that will not exceed a mature height of 3-feet. Large bushes and trees should be planted away from the slab foundations and flatwork at a distance that will exceed their full mature height and canopy width.
- Individual concrete panels of concrete sitework should be dowelled together to minimize trip hazards as a result of differential movements within the flatwork.
- All efforts should be made to avoid having situations where site flatwork panels are partially supported on properly compacted select fill soils and partially supported on natural in-situ highly plastic soils which will result in differential movement and may also result in a negative slope back to the building causing ponding of water next to the structures.
- Pavements should be designed to drain quickly with a minimum positive slope of 1-percent. Planter islands should incorporate a 12-inch clay cap at the surface and the curbs should be designed to prevent moisture from entering the pavement base materials.
- In areas where flatwork is planned for construction and extending 5-feet outside the plan area of the flatwork, all surface organics and deleterious materials shall be removed, the upper 12-inches of exposed subgrade soils should be scarified, moisture conditioned to a minimum of 2-percent above the optimum moisture content and then compacted to at least 90-percent and not more than 95-percent of the maximum dry density as determined by the standard Proctor test (ASTM D698). **This does not apply to flatwork supporting car or truck traffic.**
- If it is desired to reduce the PVR movements beneath flatwork, the fat clay soils should be undercut and replaced with select fill as discussed in the "PVR Discussion" section of this report.

All project features beyond the scope of those discussed above should be planned and designed similarly to attain a region of relatively uniform moisture content within the foundation and flatwork areas. Poor drainage schemes are generally the primary cause of foundation and flatwork problems on clay soils.

CONSTRUCTION CONSIDERATIONS

Site Preparation

In areas where soil-supported slabs are to be constructed, the soil, fill soils, vegetation, and all loose or excessively organic materials should be removed to a minimum depth of 3-feet with the excavation extending a minimum distance of 5-feet outside the perimeter of the proposed structure and any appurtenances (including porches, attached sidewalks, stoops, etc.). The upper 1-foot of exposed subgrade soil shall be compacted to a minimum density of 95-percent of the maximum dry density, as determined by the standard Proctor test (ASTM D698) and the moisture content shall be maintained at, or above, the optimum moisture content. If any soft areas are identified, the soils should be removed and recompacted in place. Upon completion of the subgrade preparations, a minimum of 3-feet of properly compacted select fill soils shall be placed in the excavation. The select fill building pad shall be constructed to achieve uniform select fill building pad thickness supporting the proposed structure. Excavation of grade beams may proceed after placement of the select fill is complete. The contractor shall properly shore the existing building when performing the excavation and replacement operations required to reduce the PVR to 1-inch.

Select Fill

Imported select fill material used at this site should be homogenous, free from organics and other deleterious materials and should have a maximum liquid limit of 40-percent and a plasticity index (PI) between 7 and 18. The select fill soils shall have a minimum of 35-percent passing the #200 sieve and no soil particles exceeding 1½-inches will be permitted. The fill should be placed in no greater than 8-inch thick loose lifts and then compacted to a minimum density of 95-percent of the maximum dry density, as determined by the standard Proctor test (ASTM D698), and at, or above, the optimum moisture content.

Drilled Pier Installation Considerations

Based on observations made in the field and laboratory tests performed on soil samples obtained, it does not appear as if temporary steel casing will be required to successfully install straight shaft drilled piers at this site. It is recommended that the contractor have concrete on site and that the pier excavation, pier inspection, placement of reinforcing steel and pier concrete be performed in an expeditious manner. The more delays that occur during the installation process may warrant the use of temporary steel casing. Steel casing should be on site in the event it is needed to properly install the straight shaft drilled piers.

When installing straight shaft drilled piers with temporary steel casing the concrete should be placed as soon as possible after all loose material has been removed, the pier excavation inspected and reinforcing steel installed. A relatively high slump concrete mix (6 to 7-inches) is suggested to minimize aggregate segregation caused by the reinforcing steel. Free fall of concrete into the pier excavation is permitted provided the concrete can be placed into the pier excavation without striking the sides of the excavation or hitting the rebar.

It should be noted that research has shown that free fall concrete guided at the top of the excavation to avoid contact with the sides of the pier excavation and reinforcing steel can drop more than 80-feet without any measurable segregation. In addition, the research has shown that as long as the concrete drop is in air the strength of the concrete was not adversely affected. In situations where it is impossible for the concrete to fall freely without striking the rebar cage or sides of the pier excavation the free fall should be limited to 10-feet, or placed with a tremie. Pier excavations should not be allowed to stay open overnight.

The successful placement of a drilled pier foundation system is dependent on the expertise of the drilled pier foundation contractor. **A test pier excavation should be performed at the site to verify the contractor's construction methods and to identify any potential groundwater infiltration and soil sloughing problems.** The Geotechnical Engineer, or his designated representative, should be present to witness the installation of all the drilled piers, including the test pier excavation.

Earthwork and Foundation Acceptance

Exposure to the environment may weaken the soils at the foundation bearing level if the excavations remain open for long periods of time. Therefore, it is recommended that the foundation excavations be extended to final grade and that the foundation be constructed as soon as possible to minimize potential damage to the bearing soils. The foundation bearing levels should be free of loose soil, ponded water or debris and should be observed prior to concreting by the Geotechnical Engineer, or his designated representative.

Foundation concrete should not be placed on soils that have been disturbed by rainfall or seepage. If the bearing soils are softened by surface water intrusion, or by desiccation, the unsuitable soils must be removed from the foundation excavations and be replaced with properly compacted select fill prior to placement of concrete.

The Geotechnical Engineer, or his designated representative, should monitor subgrade preparation and placement of select fill. As a guideline, a minimum of one, in-place density test shall be performed on the subgrade soils and each subsequent lift of fill for each 2,000 square feet of slab, or a minimum of three in-place density tests per testing interval, whichever is greater. Any areas not meeting the required compaction should be recompacted and retested until compliance is met.

Vapor Retarder

A vapor retarder, with a permeance of less than 0.3 US perms (ASTM E96), should be placed under the concrete floor slab on the subgrade soils or carton forms to reduce the transmission of water vapor from the supporting soil through the concrete slab and to function as a slip sheet to reduce subgrade drag friction. Polyethylene film, or polyolefin, with a minimum thickness of 10-mils (0.25 mm) is typically used for reduced vapor transmission and durability during and after its installation. The vapor retarder should be installed according to the ASTM E1643, "*Standard Practice for Installation of Water Vapor Retarders Used in Contact with Earth or Granular Fill Under Concrete Slabs.*"

All penetrations through the vapor retarder should be sealed to ensure its integrity. The vapor retarder should be taped around all openings to ensure the effectiveness of the barrier. Grade stakes should not be driven through the barrier and care should be taken to avoid punctures during reinforcement and concrete placement.

Placement of slab concrete directly on the vapor retarder increases the risks of surface dusting, blistering and slab curling making good concrete practice critical. A low water to cement ratio concrete mix design, combined with proper and adequate curing procedures, will help ensure a good quality slab.

Where vapor transmission is not a concern, elimination of the vapor retarder may provide improvements in finishing characteristics and reductions in the risks of surface dusting, blistering and slab curling. However, exposure of portions of the subgrade or granular layer, such as at blockouts for columns or utility penetrations to inclement weather during construction may create excessive or deficient moisture conditions beneath portions of the slab that have already been placed. Blockouts for slab penetrations should be protected if a vapor retarder is omitted. ACI 302.1R-96 "*Guide for Concrete Floor and Slab Construction,*" recommends that a vapor retarder or vapor barrier be used only when required by the specific application.

Utilities

Utilities that project through a slab-on-grade floor or walls should be designed with either some degree of flexibility, or with sleeves, in order to prevent damage to these lines should vertical movement occur.

Addition and Control Joints

Addition and control joints should be designed and placed in various portions of the structure particularly at the joint between the existing building and the proposed addition. Properly planned placement of these joints will assist in controlling the degree and location of material cracking that normally occurs due to material shrinkage, thermal affects, soil movements and other related structural conditions.

October 19, 2018
Attn.: Mr. Blair McDavid
RETL Job No.: G118421

STADIUM STORAGE BLDG. ADDN. & SCOREBOARD
4205 Wildcat Drive
Corpus Christi, Texas

GENERAL COMMENTS

If significant changes are made in the character or location of the proposed project, a consultation should be arranged to review any changes with respect to the prevailing soil conditions. At that time, it may be necessary to submit supplementary recommendations.

It is recommended that the services of RETL be engaged to test and evaluate the soils in the foundation excavations prior to concreting in order to verify that the bearing soils are consistent with those encountered in the borings. RETL cannot accept any responsibility for any conditions that deviate from those described in this report, nor for the performance of the foundations if not engaged to also provide construction observation and testing for this project. If it is required for RETL to accept any liability, then RETL must agree with the plans and perform such observation during construction as we recommend.

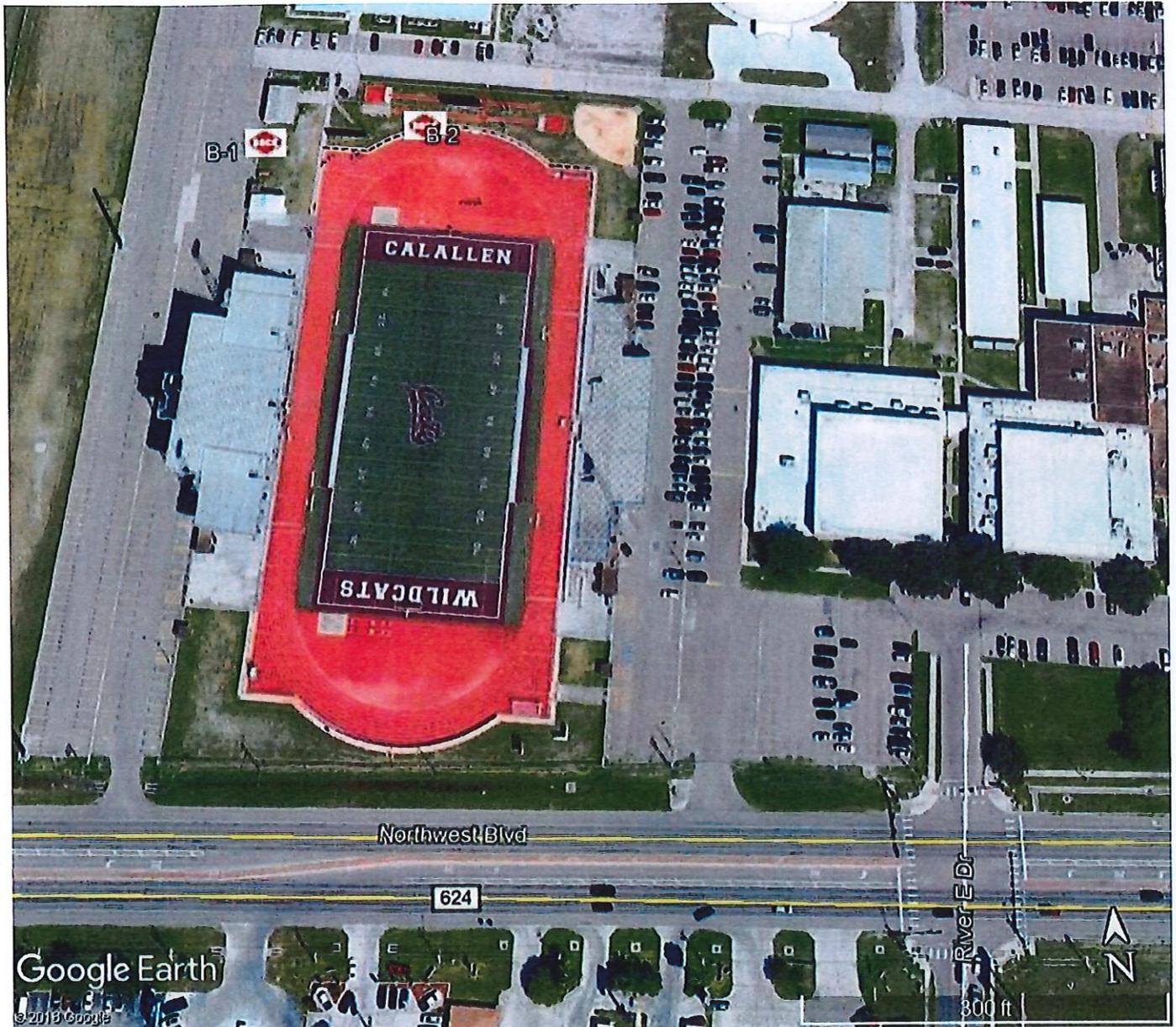
All sheeting, shoring and bracing of trenches, pits and excavations should be made the responsibility of the contractor and should comply with all current and applicable local, state and federal safety codes, regulations and practices, including the Occupational Safety and Health Administration.

APPENDIX



- GEOTECHNICAL ENGINEERING
- CONSTRUCTION MATERIALS ENGINEERING & TESTING
- SOILS • ASPHALT • CONCRETE

BORING LOCATION PLAN



October 19, 2018
Attn.: Mr. Blair McDavid
RETL Job No.: G118421

STADIUM STORAGE BLDG. ADDN. & SCOREBOARD
4205 Wildcat Drive
Corpus Christi, Texas

ROCK ENGINEERING & TESTING LABORATORY, INC.
www.rocktesting.com

6817 LEOPARD STREET • CORPUS CHRISTI, TEXAS 78409-1703
OFFICE: (361) 883-4555 • FAX: (361) 883-4711

10856 VANDALE ST • SAN ANTONIO, TEXAS 78216-3625
OFFICE: (210) 495-8000 • FAX: (210) 495-8015

No.1 ROUNDVILLE LANE • ROUND ROCK, TEXAS 78664
OFFICE: (512) 284-8022 • FAX: (512) 284-7764

LOG OF BORING B-1



Rock Engineering and Testing Laboratory, Inc.
6817 Leopard St
Corpus Christi, TX 78409
Telephone: 361-883-4555
Fax: 361-883-4711

CLIENT: Calallen ISD
PROJECT: Stadium Storage Building & New Scoreboard
LOCATION: 4205 Wildcat Drive; Corpus Christi, Texas
NUMBER: G118421

DATE(S) DRILLED: 10/3/18 - 10/3/18

DRILLING METHOD(S):
Hollow Stem Auger

GROUNDWATER INFORMATION:
Groundwater was not encountered during drilling.
Dry and Open upon completion.
24-Hour Delayed Readings: Dry and Open.

SURFACE ELEVATION: N/A

DESCRIPTION OF STRATUM

SOIL SYMBOL	FIELD DATA				LABORATORY DATA						
	DEPTH (FT)	SAMPLE NUMBER	SAMPLES	N: BLOWS/FT P: TONS/SQ FT Tv: TONS/SQ FT Qc: TONS/SQ FT	MOISTURE CONTENT (%)	ATTERBERG LIMITS			DRY DENSITY POUNDS/CU.FT	COMPRESSIVE STRENGTH (TONS/SQ.FT)	MINUS NO. 200 SIEVE (%)
						LIQUID LIMIT LL	PLASTIC LIMIT PL	PLASTICITY INDEX PI			
SS S-1	5	N= 7	P= 4.5+	22							
SH S-2	5	P= 4.5+	12	49	16	33				65	
SH S-3	5	P= 4.5+	15					107	7.8		
SH S-4	10	P= 4.5+	15	53	18	35				75	
SH S-5	10	P= 3.0	19								
SH S-6	15	P= 4.0	17	46	15	31				67	

SANDY LEAN CLAY, moist, dark gray, firm.

Same as above, very stiff. (CL)

Same as above, gray and brown.

FAT CLAY with SAND, moist, brown, with calcareous, very stiff. (CH)

Same as above.

SANDY LEAN CLAY, moist, brown, very stiff. (CL)

Boring was terminated at a depth of 15-feet.

N - STANDARD PENETRATION TEST RESISTANCE
P - POCKET PENETROMETER RESISTANCE
Qc - STATIC CONE PENETROMETER TEST INDEX

REMARKS:

Boring depth and location were determined by RETL in coordination with Calallen ISD. Drilling operations were performed by RETL at GPS Coordinates N 27.85852° W 97.36869°.

LOG OF BORING B-2



Rock Engineering and Testing Laboratory, Inc.
6817 Leopard St
Corpus Christi, TX 78409
Telephone: 361-883-4555
Fax: 361-883-4711

CLIENT: Calallen ISD
PROJECT: Stadium Storage Building & New Scoreboard
LOCATION: 4205 Wildcat Drive; Corpus Christi, Texas
NUMBER: G118421

DATE(S) DRILLED: 10/3/18 - 10/3/18

FIELD DATA				LABORATORY DATA								DRILLING METHOD(S):
SOIL SYMBOL	DEPTH (FT)	SAMPLE NUMBER	SAMPLES N: BLOWS/FT P: TONS/SQ FT Tc: TONS/SQ FT Qc: TONS/SQ FT	MOISTURE CONTENT (%)	ATTERBERG LIMITS			DRY DENSITY POUNDS/CU.FT	COMPRESSIVE STRENGTH (TONS/SQ FT)	MINUS NO. 200 SIEVE (%)	DESCRIPTION OF STRATUM	
					LL	PL	PI					
		SS S-1	N= 7	16							<u>SANDY LEAN CLAY</u> , moist, brown and gray, firm.	
	5	SH S-2	P= 4.5+	12	43	16	27			68	Same as above, very stiff. (CL)	
		SH S-3	P= 4.5+	17				104	6.4		Same as above.	
	10	SH S-4	P= 2.5	22	45	16	29			72	<u>LEAN CLAY with SAND</u> , moist, brown, very stiff.	
		SH S-5	P= 4.0	17				105	1.3		Same as above.	
	15	SH S-6	P= 3.0	15	38	13	25			57	<u>SANDY LEAN CLAY</u> , moist, brown, very stiff.	
	20	SS S-7	N= 16	10							<u>SILTY SAND</u> , moist, brown, medium.	
	25	SS S-8	N= 13	7						14	Same as above, dry.	
	30	SS S-9	N= 24	4							Same as above.	
Boring was terminated at a depth of 30-feet.												
<p>REMARKS: Boring depth and location were determined by RETL in coordination with Calallen ISD. Drilling operations were performed by RETL at GPS Coordinates N 27.85853° W 97.63820°.</p>												

N - STANDARD PENETRATION TEST RESISTANCE
P - POCKET PENETROMETER RESISTANCE
Qc - STATIC CONE PENETROMETER TEST INDEX

LOG OF BORING - JNT G118421.GPJ, ROCK_ETL.GDT, 10/18/18



Engineering & Testing
Laboratory, Inc.

Rock Engineering & Testing Laboratory
6817 Leopard Street
Corpus Christi, TX 78409-1703
Telephone: 361-883-4555
Fax: 361-883-4711

KEY TO SOIL CLASSIFICATION AND SYMBOLS

UNIFIED SOIL CLASSIFICATION SYSTEM			TERMS CHARACTERIZING SOIL STRUCTURE		
MAJOR DIVISIONS	SYMBOL	NAME			
COARSE GRAINED SOILS	GRAVEL AND GRAVELLY SOILS	GW	Well Graded Gravels or Gravel-Sand mixtures, little or no fines	SLICKENSIDED - having inclined planes of weakness that are slick and glossy in appearance	
		GP	Poorly Graded Gravels or Gravel-Sand mixtures, little or no fines		FISSURED - containing shrinkage cracks, frequently filled with fine sand or silt; usually more or less vertical
		GM	Silty Gravels, Gravel-Sand-Silt mixtures		
		GC	Clayey Gravels, Gravel-Sand-Clay Mixtures		
	SAND AND SANDY SOILS	SW	Well Graded Sands or Gravelly Sands, little or no fines	CRUMBLY - cohesive soils which break into small blocks or crumbs on drying	
		SP	Poorly Graded Sands or Gravelly Sands, little or no fines	CALCAREOUS - containing appreciable quantities of calcium carbonate, generally nodular	
		SM	Silty Sands, Sand-Silt Mixtures	WELL GRADED - having wide range in grain sizes and substantial amounts of all intermediate particle sizes	
		SC	Clayey Sands, Sand-Clay mixtures	POORLY GRADED - predominantly of one grain size uniformly graded) or having a range of sizes with some intermediate size missing (gap or skip graded)	
FINE GRAINED SOILS	SILTS AND CLAYS LL < 50	ML	Inorganic Silts and very fine Sands, Rock Flour, Silty or Clayey fine Sands or Clayey Silts	<p>SYMBOLS FOR TEST DATA</p> — Groundwater Level (Initial Reading) — Groundwater Level (Final Reading) — Shelby Tube Sample — SPT Samples — Auger Sample — Rock Core	
		CL	Inorganic Clays of low to medium plasticity, Gravelly Clays, Sandy Clays, Silty Clays, Lean Clays		
		OL	Organic Silts and Organic Silt-Clays of low plasticity		
	SILTS AND CLAYS LL > 50	MH	Inorganic Silts, Micaceous or Diatomaceous fine Sandy or Silty soils, Elastic Silts		
		CH	Inorganic Clays of high plasticity, Fat Clays		
		OH	Organic Clays of medium to high plasticity, Organic Silts		
HIGHLY ORGANIC SOILS	PT	Peat and other Highly Organic soils			

TERMS DESCRIBING CONSISTENCY OF SOIL

COARSE GRAINED SOILS		FINE GRAINED SOILS		
DESCRIPTIVE TERM	NO. BLOWS/FT. STANDARD PEN. TEST	DESCRIPTIVE TERM	NO. BLOWS/FT. STANDARD PEN. TEST	UNCONFINED COMPRESSION TONS PER SQ. FT.
Very Loose	0 - 4	Very Soft	< 2	< 0.25
Loose	4 - 10	Soft	2 - 4	0.25 - 0.50
Medium	10 - 30	Firm	4 - 8	0.50 - 1.00
Dense	30 - 50	Stiff	8 - 15	1.00 - 2.00
Very Dense	over 50	Very Stiff	15 - 30	2.00 - 4.00
		Hard	over 30	over 4.00

Field Classification for "Consistency" is determined with a 0.25" diameter penetrometer

APPENDIX B

**STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN
BUILDER, AIA DOCUMENT A141-2014, AS MODIFIED BY THE OWNER**

AND

**STANDARD DESIGN BUILD AMENDMENT FOR CONSTRUCTION, AIA
DOCUMENT A141-2014 (EXHIBIT A), AS MODIFIED BY THE OWNER**

AND

INSURANCE AND BONDS FOR CONSTRUCTION (EXHIBIT B)

AND

PREVAILING WAGE RATE SCHEDULE FOR PROJECT (EXHIBIT C)

See separate documents provided as .pdf upon request.

AIA[®] Document A141[®] – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the _____ day of _____ in the year
TWO THOUSAND TWENTY-FIVE (2025) -
(In words, indicate day, month and year.)

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

Calallen Independent School District, a political subdivision and public school district of
the State of Texas
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600

and the Design-Builder:
(Name, legal status, address and other information)

TO BE DETERMINED – DRAFT FOR PROCUREMENT ONLY

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

Calallen Independent School District (2024 Bond Project):
CISD Stadium Scoreboard and Sound System Project

The Owner and Design-Builder 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C PREVAILING WAGE SCHEDULE

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

DRAFT FOR PROCUREMENT

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

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§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

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§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Not applicable.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Not applicable.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

§ 1.1.7 The Owner's design and construction milestone dates:

- .1 Design phase milestone dates:

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- .2 Submission of Design-Builder Proposal:

DRAFT FOR PROCUREMENT

Init.

.3 Phased completion dates:

DRAFT FOR PROCUREMENT

.4 Substantial Completion date:

DRAFT FOR PROCUREMENT

.5 Other milestone dates:

DRAFT FOR PROCUREMENT

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect/Engineer

DRAFT FOR PROCUREMENT

Name: _____
Title: _____
Company Name: _____
Address: _____
Phone: _____
Email: _____

.2 Consultants

DRAFT FOR PROCUREMENT

Name: _____
Title: _____
Company Name: _____
Address: _____
Phone: _____
Email: _____

.3 Contractors

DRAFT FOR PROCUREMENT

Name: _____
Title: _____
Company Name: _____
Address: _____
Phone: _____
Email: _____

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Not applicable.

Init.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Emily Lorenz, Superintendent of Schools
Calallen Independent School District
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600
Email: elorenz@calallen.org

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

See Section 1.2.3, below.

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

Pursuant to Texas Government Code 2269.305, Owner will retain the following professionals as Owner's Independent Representatives for the Project:

Keith A. Sanders, P.E., President and CEO
Wallace R. Wilkerson, Inc. (d/b/a Wilkerson & Sanders, Inc.)
3530 S. Alameda Street
Corpus Christi, Texas 78411-1722
Phone: (361) 853-2071; (361) 774-1873
Email: izzy102096@aol.com or ksanders.pe@gmail.com

Herein shall be referred to as "Owner's Independent Representative."

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

DRAFT FOR PROCUREMENT

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

Init.

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement") as amended by the Owner; addenda issued prior to execution of the Agreement; the Design-Builder's proposal and written modifications to the proposal accepted by the Owner, if any, and 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, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. The Contract Documents executed or identified herein shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Design-Builder, the Contract Documents identified in the signed contract prevail.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the Board of Trustees of the Calallen Independent School District is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's

Init.

authorized representative. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Neither the Architect nor the Contractor may rely upon the direction of any employee of Owner who has not been so designated as Owner's representative. Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work. When the plural "Contract Times" is used, it means milestones designated in the Progress Schedule.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined. A Calendar Day is a day of twenty-four (24) hours measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven (11) hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

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

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 [Intentionally Deleted.]
- .2 [Intentionally Deleted.]
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 [Intentionally Deleted.]
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 [Intentionally Deleted/]
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of _____ percent (____%) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest

(Paragraphs deleted)

in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of four (4) years following substantial completion of the Project.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder hereby covenants and agrees that it shall perform the Work in a good and workmanlike manner and in accordance with the Contract Documents. Unless otherwise provided in the Design-Build Documents, Design-Builder shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work Services. The intent of the Design-Build Documents is to include all items necessary for the proper execution and completion of the Work Services including, without limitation, all items and services that are consistent with, contemplated by, or reasonably inferable from the Design-Build Documents, whether or not such items and services are specifically mentioned therein. The Design-Build Documents are complementary, and what is required by one shall be binding as if required by all.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

Init.

§ 3.1.3.2 The Design-Builder shall notify the Owner in writing if the Design-Builder or Architect believes that that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation. Failure of the Design-Builder and/or its Architect to notify the Owner in such circumstances shall result in the Design-Builder being responsible to the Owner for costs and damages resulting from a violation of the applicable law statute, ordinance, building code, rule or regulation. Neither the Design-Builder nor the architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder's initial schedule shall be provided with the proposal to the Owner's procurement package for this Project. As part of the response, the Design-Builder shall prepare and submit for the Owner and Owner's Independent Representative information for the Design-Builder's construction schedule for the Work. The Design-Builder shall, promptly after being awarded the Contract, prepare and submit for the Owner's and Owner's Independent Representative's information Design-Builder's final coordinated construction schedule for the Work. The schedule shall not exceed time limits set forth in the Design-Build Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.

- .1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Design-Builder and Owner. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Design-Builder to project cash flow for the Project.
- .2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.
- .3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .4 If any updated schedule exceeds the time limits set forth in the Design-Build Documents for completion of the Work, the Design-Builder shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Design-Builder's planned course of action for completing the Work within the time limits set forth in the Design-Build Documents. If the Design-Builder asserts that the failure of the Owner to provide information to the Design-Builder is the reason for anticipated delay in completion, the Design-Builder shall also specify what information is required from the Owner.
- .5 Neither the Owner or the Design-Builder shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Design-Builder agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.
- .6 Submission of any schedule under this Contract constitutes a representation by the Design-Builder that: (1) the schedule represents the sequence in which the Design-Builder intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed work; (3) that to the best of its knowledge and belief the Design-Builder is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Design-Builder intends to complete the remaining work in the sequence and time indicated.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.9.3 The construction schedule shall be in a detailed precedence - style critical path method ("CPM") format satisfactory to the Owner that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Exhibit A, Design-Build Agreement. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and resubmitted for acceptance. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.1.10 **Certifications.** The Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

(Paragraph deleted)

§ 3.1.11.6 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty

§ 3.1.12.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.2 The warranty provided in Paragraph 3.1.12.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Design-Build Documents.

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

§ 3.1.12.4 Neither the final payment nor any provision in the Design-Build Documents shall constitute an acceptance of Work not done in accordance with the Design-Build Documents or relieve the Design-Builder or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Design-Builder guarantees that the Work will conform to the Design-Build Documents.

§ 3.1.12.5 The building(s) constructed, if any, shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Design-Builder's control. The Design-Builder, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and do any work necessary to make the building(s) watertight. The Design-Builder also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the building(s) to original condition.

§ 3.1.12.6 **Manufacturers' Warranties.** At Final Acceptance of the Work or interim completion of a particular phase of the Work, Design-Builder shall furnish the Owner two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Owner. These Manufacturers' Warranties are in addition to and not in lieu of Design-Builder's warranty set forth in Sections 3.1.12 and 11.2.2, and the Owner is entitled to look to Design-Builder for remedy in all cases where Design-Builder's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Owner shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and Design-Builder shall cause six (6) copies of an acknowledged set to be made and furnished to the Owner. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Owner than those terms that are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Owner, or be in a freely assignable form and be assigned to the Owner without limitations.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device, which is subject of patent rights or copyrights, held by others.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILFUL OR NEGLIGENT ACT OR OMISSION OF THE DESIGN-BUILDER, THE ARCHITECT, ANY CONTRACTOR OR SUBCONTRACTOR OF DESIGN-BUILDER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH**

SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER.

§ 3.1.14.2 DESIGN-BUILDER SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO DESIGN-BUILDER'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 WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS. 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 DESIGN-BUILDER'S OBLIGATIONS UNDER PARAGRAPH 3.1.14.1, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH DESIGN-BUILDER AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS PARAGRAPH AS TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY DESIGN-BUILDER TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER IS A SOLE OR CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND DESIGN-BUILDER ARE BOTH PARTIES.

§ 3.1.14.3 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Design-Builder is to comply with said statutes in performance of the Work by Design-Builder and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Design-Builder.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

§ 3.1.17 **REPRESENTATIONS AND WARRANTIES**

§ 3.1.17.1 The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Design-Build Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Design-Build Documents;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- .4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- .5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Design-Build Documents.

§ 3.1.18 **BUSINESS STANDARDS**

§ 3.1.18.1 Design-Builder, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Design-Builder shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Design-Builder's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

§ 3.1.19.1 Pursuant to 19 Texas Administrative Code § 61.1036, the Design-Builder shall sign and seal the Construction Documents and certify on the Certification of Project Completion form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used the best professional judgment and reasonable care consistent with the practice of engineering in the State of Texas in executing the construction documents and that these documents conform with the provisions of 19 TAC § 61.1036.
- .2 It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.
- .3 It has designed the facility according to the provisions of 19 TAC § 61.1036 based on the long-range school facility plan and/or education specifications, building code specifications, and all documented changes to the Construction Documents provided by the District.
- .4 As a condition to the Project being considered Substantially Complete, the Design-Builder shall certify on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.1.19.1.3 above.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 **General**

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The design services shall include normal structural, mechanical, electrical and civil engineering services. Design-Builder shall be responsible for compliance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code Chapter 1001. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Owner, or the work installed by other contractors, is not guaranteed by the Owner. The Design-Builder shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Design-Builder's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Design-Builder without any additional cost to the Owner.

§ 4.3.3 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Schematic Design Documents. Upon the execution of the Design-Build agreement, the Design-Builder shall provide for Owner's approval Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Design-Builder's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 5.1.2 Upon the Owner's written approval of the Schematic Design Documents, the Design-Builder shall provide the Construction Documents to the Owner for the review and written approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.3 Upon submission of the design and Construction Documents Design-Builder shall be deemed to have satisfied itself as to, and to adopt and accept responsibility for, the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, the Design-Builder hereby warrants:

- .1 That the said design is in all respects adequate, accurate, sufficient and fit for its purpose; and
- .2 That there are no ambiguities, inaccuracies or inconsistencies within or between the documents forming the Design-Build Contract; and
- .3 The Design-Builder shall work with the aforementioned design so as to procure a complete detailed design of the Work and of each and every part thereof such that the Work and each and every part thereof will jointly and severally be in all respects fit for its or their purpose and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

§ 5.1.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ 5.2 Construction

§ 5.2.1 Commencement. Construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 [Paragraph Deleted.]

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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 Design-Build Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and except as stated below shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that any recommended means, methods, techniques or procedures from the Owner's Independent Representative may not be safe, the Design-Builder shall coordinate first with the Owner's Independent Representatives regarding alternative plans and if the two cannot come to agreement, then the Design-Builder shall give timely notice to the Owner and Owner's Independent Representative and shall not proceed with that portion of the Work without further written instructions from the Owner and Owner's Independent Representative. If the Design-Builder is then instructed by the Owner in writing to proceed with the Owner's Independent Representative's recommended means, methods, techniques, sequences, or procedures, Owner shall be solely responsible for any loss or damage arising solely from the Owner-required means, methods, techniques, sequences or procedures.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.2.5 The Design-Builder shall be responsible for correcting Work which does not conform to the Design-Build Documents.

§ 5.2.6 Startup/Commissioning. Design-Builder shall conduct a thorough and systematic performance test of each element and total system of the installed equipment in accordance with Schedule A and demonstrate that all equipment complies with the requirements of the Contract Documents. Design-Builder shall provide advance written notice of at least ten (10) business days to the Owner of the scheduled test(s). The Owner shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the equipment. Design-Builder, or its Subcontractor(s), shall correct or adjust all deficiencies in operation of the equipment identified during the course of the tests described in this Section. Design-Builder shall provide to the Owner a description of the ongoing training requirements for the site's operations and maintenance personnel necessary to maintain proper equipment performance after Final Acceptance.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.3.4 Prevailing Wages. Attention is called to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Design-Builder and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 5.3.4.1 In accordance therewith, the Owner has established a scale of prevailing wages which is attached as Exhibit C, and not less than this established scale must be paid on the project. Any workers not included in the schedule shall

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be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

§ 5.3.4.2 If the Design-Builder or any of its Contractors or Subcontractors violates the provisions of Sections 3.4.4 or 3.4.5 above, Design-Builder shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 5.3.5 The Design-Builder shall be responsible for the actions of Design-Builder's forces and all tiers of Subcontractor's forces. The Design-Builder recognizes that the Project Site is a public-school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Design-Builder's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Design-Builder or employees or students of the Owner by employees of the Design-Builder is strictly forbidden. Any employee of the Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Design-Builder, including removal from the job site.

§ 5.3.6 The Design-Builder shall furnish a list to the Owner of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction.

§ 5.3.7 At all times during the progress of the Work Design-Builder shall assign a competent resident superintendent and any necessary assistants, all satisfactory to the Owner. Any Superintendent designee shall be identified in writing to the Owner promptly after Owner issues written Notice to Proceed. The Superintendent shall represent the Design-Builder and all directions given to him shall be binding on the Design-Builder. The designated Superintendent shall not be replaced without written notice to the Owner, except under extraordinary circumstances. The Superintendent may not be employed on any other project prior to final completion of the Work.

§ 5.3.8 Design-Builder shall provide an adequate staff for the proper coordination and expedition of the work. Owner reserves the right to require Design-Builder to dismiss from the work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Design-Build Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 5.3.9 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 5.3.10 The Owner reserves the right to utilize one or more of its employees or its Total Commissioning Authority to function in the capacity of the Owner's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 5.4 Taxes

The Design-Builder will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) the Owner is exempt, and (2) the Owner has provided the Design-Builder with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. DESIGN-BUILDER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF DESIGN-BUILDER OR ANY OF DESIGN-BUILDER'S SUBCONTRACTORS TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS. Design-Builder shall cooperate with Owner, take such action and execute such documents as may be necessary so that Owner may utilize its exemption for the Texas Sales and Use tax for materials used in such project. The tax-exempt identification number for Calallen Independent School District is 1-74-6000464-1.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.5.5 Notwithstanding the delivery of a survey or other documents by the Owner, Design-Builder 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. Design-Builder shall be responsible for, and shall repair at Design-Builder's own expense, any damage done to lines, cables, pipes, and pipelines identified to Design-Builder.

§ 5.5.6 The Design-Builder shall also obtain all permits and approvals associated with the Project, job sites and CHPS certification, including payment of all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Design-Builder's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Design-Builder during the construction process which requires the issuance of a permit shall be at Design-Builder's sole cost.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

§ 5.8.1 The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.8.2 Design-Builder shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project. Design-Builder shall make such reports and records available to inspection by the Owner or its agents, within five (5) working days of request by Owner or its agents.

§ 5.9 Use of Site

The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent to or near to the Project site. Design-Builder and all Subcontractors shall use only such entrances to the Site as are designated by the Owner. During occupied hours, Design-Builder shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

§ 5.10 Cutting and Patching

§ 5.10.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 5.10.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.10.3 Any part of the finished Work damaged during installation or prior to substantial completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall, not less than two (2) times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Design-Builder shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.11.3 The Design-Builder shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site. Upon request of the Owner, the Design-Builder shall accompany the Owner on an inspection of the Work.

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 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, or other construction or operations on the site. The Owner shall notify the Design-Builder promptly after execution of any separate contract. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder

(Paragraphs deleted)

which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times and is issued on or after the Effective Date of the Design-Build Contract.

§ 6.2.2 Acceptance of a Change Order by the Design-Builder shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

§ 6.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section 6.3.3. The Design-Builder shall not be entitled to include overhead and profit in any Change Order, except to the extent the Change Order results from an Owner-requested change in scope.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are

involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 [Paragraph Deleted.]

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 [Paragraph Deleted.]

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Pursuant to the requirements of Texas Business and Commerce Code Section 35.521(n)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner, at the Owner's expense.

§ 7.2.10 Owner shall maintain Owner's typical insurance for the facilities during the course of the Project.

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§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct non-conforming or defective Work as required by Section 11.2 or fails to complete the Work as required by Article 3 or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Design-Builder to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under paragraph 11.2.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 The Design-Builder and the Design-Builder's surety shall be liable for and shall pay the Owner, as liquidated damages and not as a penalty, the sums hereinafter stipulated for each calendar day of delay after the date established for Substantial Completion in the Design-Build Documents until the Work is substantially complete, whether the Work is completed by Design-Builder, or by a substitute contractor after Design-Builder's abandonment of the Work or termination by the Owner for cause: **SEVEN HUNDRED FIFTY DOLLARS AND NO CENTS (\$750.00).**

§ 8.2 Delays and Extensions of Time

§ 8.2.1 The Owner, except as provided for in this Section 8.2.1, shall not be liable to the Design-Builder for delay to the Design-Builder's Work by the act, neglect or default of the Owner, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner delay the Design-Builder in the Work, Design-Builder shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Design-Builder any compensation for such Owner-caused delays.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment. All costs of overtime work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Design-Build Documents, shall be and are included in the Contract Sum.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least thirty (30) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Order or Change Directives.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or

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entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. **DESIGN-BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DESIGN-BUILDER OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO THE DESIGN-BUILDER.**

§ 9.3.4 In each Request for Payment, Design-Builder shall certify that there are no known mechanics' or materialmen's liens outstanding at the date of the Request for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmen's liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Design-Builder.

§ 9.3.5 The Design-Builder shall, within ten (10) days following receipt of payment from the Owner, pay the Architect, other design professionals and all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Design-Builder's failure to make payments within such time shall constitute a material breach of this contract. Design-Builder shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the Design-Builder hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Design-Builder has failed to make payment promptly to the Design-Builder's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Design-Builder, the Owner shall be entitled to withhold payment to the Design-Builder in part or in whole to the extent necessary to protect the Owner.

§ 9.3.6 **Waiver of Lien.** It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents;
- .8 delay beyond the times set forth elsewhere in the Design-Build Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;
- .9 evidence of financial inability to perform the Contract fully;
- .10 failure to submit record documents required by the Contract; or
- .11 failure of the Design-Builder to perform any other obligations of the Contract.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in subparagraph 9.5.1.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, but shall have no obligation to, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 The Design-Builder shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253 as set out in Exhibit B.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the entire Project and all systems are fully complete and fully operable permitting Owner full and complete use of the entire Project, subject only to the correction or completion of minor finish work items the value of which shall in no event exceed one percent (1%) of the Contract Sum.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete as determined by the Owner, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Retainage is not due to the Design-Builder until thirty-one (31) days after final completion of the Work as set out in Paragraph 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities

assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Design-Builder is ready for a final inspection it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Design-Build Documents and the Design-Build Contract has been fully performed, the Owner will promptly approve a Certificate of Completion and a final Certificate for Payment certifying that the Project is complete and the Design-Builder is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except as otherwise agreed in writing, Owner will perform no more than three (3) inspections per building to determine whether the Work has attained Final Completion in accordance with the Design-Build Documents. If the Owner is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Design-Builder shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Design-Builder's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The

(Paragraphs deleted)

Owner shall make final payment of all sums due the Design-Builder not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. Final Certificate of Payment and release of retainage will not

be considered unless all testing required by the Design-Build Documents (including project manual), project specifications, and drawing are provided in their final format showing that all findings of noncompliance have been corrected.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

§ 9.11 AUDIT

Design-Builder agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Design-Builder agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Design-Builder and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 ALLOCATION OF OWNER'S ADDITIONAL COSTS

In addition to any liquidated damages payable to the Owner by the Design-Builder, if: (1) the Owner is required to make more than two (2) inspections for Substantial Completion; (2) the Owner is required to make more than two (2) inspections for Final Completion; or (3) the Work is not substantially complete within sixty (60) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to any Consulting Architect or other Consultant hired by the Owner for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

Design-Builder shall develop a safety program applicable to each job site and to the Work to be done, review such program with Owner in advance of beginning the Work, and enforce such program at all times. Further, Design-Builder shall comply with all applicable laws and regulations including but not limited to, the standards and regulations promulgated by the Secretary of labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Design-Builder employees. Owner shall have the right, but not the obligation, to inspect Design-Builder's complete responsibility for protecting the safety and health of its employees and subcontractor.

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

§ 10.1.3 Design-Builder's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 10.1.4 Design-Builder has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

§ 10.1.5 Design-Builder will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where

drug or alcohol use could have been a contributing factor. Owner has the right to require Design-Builder to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's employees may only be considered for return to work after the Design-Builder certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Design-Builder will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 10.1.6 Design-Builder will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Education and Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and 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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 THE DESIGN-BUILDER SHALL PROMPTLY REMEDY DAMAGE AND LOSS (OTHER THAN DAMAGE OR LOSS INSURED UNDER PROPERTY INSURANCE REQUIRED BY THE DESIGN-BUILD DOCUMENTS) AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO PROPERTY REFERRED TO IN SECTIONS 10.2.1.2 AND 10.2.1.3, CAUSED IN WHOLE OR IN PART BY THE DESIGN-BUILDER, THE ARCHITECT, A CONTRACTOR, A SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED OR CONTRACTED BY ANY OF THEM, OR BY ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE AND FOR WHICH THE DESIGN-BUILDER IS RESPONSIBLE UNDER SECTIONS 10.2.1.2 AND 10.2.1.3, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF DESIGN-BUILDER AND OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Design-Builder shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Section 756.021, et seq.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner may obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up. Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance that the Design-Builder brings to the site and negligently handles; or (2) where the Design-Builder fails to perform the obligation under this section, except to the extent the cost and expense are due to the Owner's fault or negligence.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Subparagraph 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Subparagraph shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the

Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 The Design-Builder shall certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Design-Builder shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. In such event, Design-Builder shall be entitled to reimbursement of the actual costs of the goods and services necessary to prevent threatened damage, injury or loss, provided such compensation does not exceed the Contract Sum established herein.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

- .1 If a portion of the Work has been covered and the Owner has specifically requested to see such Work, or if any known deficiencies exist, or the Design-Build Documents specifically request inspection prior to its being covered, the Owner may request to see that Work and it shall be uncovered by the Design-Builder. If the work is not in accordance with the Design-Build Documents, it must be corrected and covered at the expense of the Design-Builder. If the Work is according to the Design-Build Documents, the cost to restore cover on the Work is at the sole expense of the Design-Builder.
- .2 Where deficiencies are observed and noted, in addition to listing in the Site Visit Reports, the Owner may, at his/her own discretion, institute a "Notice to Comply" form (NTC) citing the deficiency. Only one item per notice will be listed in order to enable each individual deficiency to be tracked until corrected.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

§ 11.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2 for portions of Work recurring correction.

§ 11.2.2.4 Owner and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building shall have its own, separate, and independent date of Substantial Completion or Final Completion. Design-Builder shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each building which is substantially complete will expire, and dates of Final Completion for each building. Design-Builder agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building which has been substantially completed. Prior to termination of the one (1) year warranty period, Design-Builder shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Design-Builder of deficiencies and Design-Builder shall start remedying these defects within three (3) days of initial notification from Owner. Design-Builder shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Design-Builder fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Design-Builder's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 11.2.2.5 The Design-Builder shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of paragraphs 3.1.12 and 11.2.2 for all Work under the Design-Build Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, and furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.2.6 The provisions of this Paragraph 11.2 apply to Work done by subcontractors of the Design-Builder as well as work done directly by employees of the Design-Builder.

§ 11.2.7 Design-Builder's express obligation herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 11.3 Acceptance of Nonconforming Work

If, however, Owner and Design-Builder deem it inexpedient to require the correction of work damaged or not done in accordance with the Design-Build Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Design-Builder and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Design-Builder. The settlement shall not be

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unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. Upon execution of this Agreement, the Design-Builder grants to the Owner a nonexclusive license to reproduce the Instruments of Service for purposes of constructing, using, and maintaining the Project, and shall obtain similar, nonexclusive licenses from the Design-Builder's consultants.

- .1 The payment of fees to the Design-Builder for professional services performed under this Agreement shall constitute full payment for a one-time, perpetual license fee for those uses of the Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.
- .2 The Owner shall have the right to use the Instruments of Service and to make derivative Works thereof for the purpose of completing the Project in the event Design-Builder is terminated for cause pursuant to this Agreement, without regard to whether such termination shall subsequently be adjudicated to have been wrongful. In the event the Owner shall make derivative works of the Instruments of Service pursuant to this Paragraph, the Design-Builder shall bear no liability for errors or omissions appearing in such derivative works.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 [Paragraph Deleted.]

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 12.1.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses

incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. Such compensation shall include profit only on work performed prior to termination. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.
- .4 [Subsection Deleted.]

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit only on Work performed prior to termination, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

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- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents; or
- .6 any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntary or involuntarily, or makes an assignment for the benefit of creditors, and the Design-Builder, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Design-Builder will either (i) perform the Work of such Subcontractor with the Design-Builder's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Design-Builder for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Design-Builder's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Design-Build Documents.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In the case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, for profits only on that portion of the Work executed, and for reasonable costs of demobilization.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 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.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Section 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

(Paragraphs deleted)

§ 14.1.6.3 The Design-Builder shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Design-Builder 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 not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 14.1.7 CALCULATING CLAIMS FOR DAMAGES

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- .4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 14.1.8 SUBCONTRACTOR PASS-THROUGH CLAIMS.

In the event that any Subcontractor of the Design-Builder asserts a claim to the Design-Builder that the Design-Builder seeks to pass through to the Owner under the Design-Build Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to the following:

- .1 the requirements of Sections 14.1.1 through 14.1.7 above; and
- .2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Design-Builder to seek and assert such claim against the Owner:
 - (i) The Design-Builder shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Design-Builder shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Design-Builder has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Design-Build Documents for any markup). The liability or responsibilities shall be identified in writing by the Design-Builder to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Design-Builder in the claim submittal materials.
 - (ii) The Design-Builder shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Design-Builder shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Design-Builder has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.
 - (iii) The subcontractor making the claim to the Design-Builder shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Design-Builder in the claim submittal materials.

Assertion of a claim by Design-Builder for pass-through of a subcontractor claim shall only be permitted to the extent payment of the claim does not result in an increase in the Contract Sum established herein.

§ 14.1.9 Any failure of the Design-Builder to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

§ 14.1.10 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Design-Build Documents or law.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Upon receipt by the Design-Builder of Owner's initial decision, if Design-Builder elects not to accept such initial decision as rendered and makes a formal objection, the Design-Builder and Owner shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached, either party may request mediation of the dispute pursuant to Section 14.3.

§ 14.2.6.1 [Paragraph Deleted.]

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 **Waiver of Lien.** It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.3.4 In the event the Owner and the Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred and the parties may proceed to litigate the dispute.

§ 14.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, Design-Builder may not bring a legal action against the Owner unless the Design-Builder has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Design-Builder's Claim, dispute or other matter.

§ 14.4 Arbitration [Not Applicable – Section Deleted.]

(Paragraphs deleted)

§ 14.4.4 Consolidation or Joinder [Not Applicable – Section Deleted.]

(Paragraphs deleted)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1.1 Governing Law

The Contract shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts in the County in which the Project is located. No provision of this Agreement is consent to suit.

§ 15.1.2 This Agreement is made under the authority of Subchapter I of Chapter 271 of the Texas Local Government Code. Any party hereto that prevails in the adjudication of any claim arising under this Agreement shall be entitled to recover its reasonable and necessary attorney's fees under Section 271.159 of the Texas Local Government Code. Except as provided in this Subparagraph 15.1.2, no provision of this Agreement shall waive any immunity or defense.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10 and 3.1.19.1, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail, return receipt requested, [electronic mail] or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

Init.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. The Owner will contract for, independently of the Design-Builder, the inspection services, the testing of construction materials, and the verification testing services necessary for the acceptance of the Work by the Owner. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law, including a request pursuant to the Texas Public Information Act, Government Code Chapter 552, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.6.2 Notwithstanding any provision of this Agreement to the contrary, nothing herein may be construed as a limitation on the Owner's obligations under the Texas Public Information Act, Texas Government Code Chapter 552, and no disclosure of materials as required by the Act shall constitute a breach of this Agreement. In the event District receives a request for materials identified by Design-Builder as confidential, copyrighted, trade secret, or proprietary, or which give advantage to a competitor, District shall promptly notify the Design-Builder of the request and shall permit the Design-Builder to submit to the Texas Attorney General reasons why materials should not be released pursuant to the Texas Government Code §552.305. The Owner shall not be required to submit such reasons why the materials should not be released, or to incur any expense in resisting the release of the materials.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings. Technical terms not specifically defined in the Design-Build Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms", July 1982 edition.

§ 15.9 Relationship of Parties

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

§ 15.10 REQUIRED PROVISIONS.

§ 15.10.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Design-Builder has at least ten (10) full time employees, then the Design-Builder, by its execution of this Agreement represents and warrants to the Owner that the Design-Builder does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 15.10.2 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 15.10.3 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 15.10.4 Design-Builder 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 Design-Builder has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Contract.

§ 15.10.5 By signing this Agreement, the undersigned certifies as follows: Under Section 231.009 of the Texas Family Code, the Design-Builder certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld in this certification is inaccurate.

§ 15.10.6 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Design-Builder agrees that the contract can be terminated if the Design-Builder knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Design-Builder agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to

the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 15.10.7 Design-Builder 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 Design-Builder has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 15.10.8 Pursuant to Texas Government Code Chapter 2273, Design-Builder represents and warrants that it not an abortion provider or an affiliate of an abortion provider.

§ 15.10.9 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

§ 15.11 CRIMINAL HISTORY RECORDS CHECKS

§ 15.11.1 Prior to the commencement of work, Design-Builder shall take all necessary steps to comply with Texas Education Code, Section 22.0834 by obtaining, if a Qualified Contractor, as defined, or arranging with Owner to obtain, if not a Qualified Contractor, national criminal history record information ("CHRI") as to Design-Builder its Contractors and Subcontractors and all persons associated with them including their employees, agents and representatives who a) have or will have continuing duties related to the contracted services; and b) have or will have direct contact with students (each a "Covered Employee").

§ 15.11.2 If the Design-Builder or any Subcontractor determines that § 15.11.1 does not apply to an employee, the Design-Builder or Subcontractor shall make a reasonable effort to ensure that the conditions or precautions that resulted in the determination that § 15.11.1 did not apply to the employee continue to exist throughout the time that the contracted services are provided.

§ 15.11.3 The requirements of § 15.11.1 do not apply if:

- .1 the public work does not involve the construction, alteration, or repair of an Instructional Facility as defined by Section 46.001, Texas Education Code (real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code);
- .2. for public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first day the facility will be used for instructional purposes; or
- .3 for a public work that involves an existing Instructional Facility:
 - (a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
 - (b) the Design-Builder adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 15.11.4 If the Design-Builder or Contractors is not a Qualified School Contractor, a person to whom § 15.11.1 applies must submit to a CHRI review by the Owner.

§ 15.11.5 Owner and Design-Builder agree to destroy any CHRI obtained or indexed by the Federal Bureau of Investigation ("FBI") or Texas Department of Public Safety ("DPS") under this § 13.1.1 after the information is used for its authorized purpose. CHRI may only be released to the individual who is the subject of the information, by court order, or as allowed by law.

§ 15.11.6 Any Covered Employee that has during the preceding thirty (30) years, (a) been convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (b) been convicted of a felony offense under Title 5, Texas Penal Code if the victim of the offense was under 18 years of age at the time the offense was committed; (c) been convicted of an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal

History"); shall be disqualified and prohibited from performing any contract duties or services and neither the Design-Builder nor its Contractors or Subcontractor may permit such person to provide services at an Instructional Facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Design-Builder will exclude that person from assignment to the Project. To the extent the Owner, not the Design-Builder obtains the CHRI described herein., Design-Builder understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 15.11.7 Prior to commencement of its work on the Project the Design-Builder will provide written certification to the Owner that either: (1) Design-Builder and its Contractors and Subcontractors of every tier, do not have any Covered Employees, as defined; (2) Design-Builder and its Contractor and its Subcontractors of every tier are otherwise exempt from compliance with the requirements contained herein; or (3) Design-Builder and its Contractor and its Subcontractors of every tier have complied with the statutory and contractual requirements of this Agreement as of that date.

§ 15.11.8 Design-Builder agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Design-Builder will immediately remove the Covered Employee from Owner's property or other location where students are regularly present, and notify the Owner of said removal within three (3) days of doing so. Design-Builder understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement by Owner, in accordance with Article 13, Termination.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Exhibit C – Prevailing Wage Rate
- .5
- .6 Other:

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

CALALLEN INDEPENDENT SCHOOL DISTRICT

EXHIBIT ONLY – NOT FOR EXECUTION

OWNER (Signature)

Emily Lorenz, Superintendent of Schools
(Printed name and title)

CONTRACTOR: _____

TO BE DETERMINED -- EXHIBIT TO BID PACKAGE ONLY

EXHIBIT ONLY – NOT FOR EXECUTION

DESIGN-BUILDER (Signature)

Name: _____ Title : _____
(Printed name and title)

Additions and Deletions Report for AIA® Document A141® – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:59:50 ET on 04/23/2025.

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year TWO THOUSAND TWENTY-FIVE (2025) -

...

Calallen Independent School District, a political subdivision and public school district of the State of Texas
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600

...

TO BE DETERMINED – DRAFT FOR PROCUREMENT ONLY

...

Calallen Independent School District (2024 Bond Project):
CISD Stadium Scoreboard and Sound System Project

...

The Owner and Design-Builder agree as ~~follows~~follows:

PAGE 2

C SUSTAINABLE PROJECTSPREVAILING WAGE SCHEDULE

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

PAGE 3

DRAFT FOR PROCUREMENT

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DRAFT FOR PROCUREMENT

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DRAFT FOR PROCUREMENT

...

Not applicable.

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Not applicable.

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DRAFT FOR PROCUREMENT

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PAGE 4

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.1 Architect/Architect/Engineer

DRAFT FOR PROCUREMENT

Name: _____

Title: _____

Company Name: _____

Address: _____

Phone: _____

Email: _____

.2 Consultants

DRAFT FOR PROCUREMENT

Name: _____

Title: _____

Company Name: _____

Address: _____

Phone: _____

Email: _____

.3 Contractors

DRAFT FOR PROCUREMENT

Name: _____
Title: _____
Company Name: _____
Address: _____
Phone: _____
Email: _____

...

Not applicable.

PAGE 5

§ 1.1.12 If the Owner and Design-Builder and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, ~~or utilize building information modeling, they shall endeavor to establish written protocols governing the development, use, transmission, reliance, and exchange of digital data, including they shall endeavor to establish necessary protocols governing such transmissions.~~ Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

...

Emily Lorenz, Superintendent of Schools
Calallen Independent School District
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600
Email: elorenz@calallen.org

...

See Section 1.2.3, below.

...

Pursuant to Texas Government Code 2269.305, Owner will retain the following professionals as Owner's Independent Representatives for the Project:

Keith A. Sanders, P.E., President and CEO
Wallace R. Wilkerson, Inc. (d/b/a Wilkerson & Sanders, Inc.)
3530 S. Alameda Street
Corpus Christi, Texas 78411-1722
Phone: (361) 853-2071; (361) 774-1873
Email: izzy102096@aol.com or ksanders.pe@gmail.com

Herein shall be referred to as "Owner's Independent Representative."

...

DRAFT FOR PROCUREMENT

Name: _____
Title: _____
Address: _____
Phone: _____
Email: _____

[] Litigation in a court of competent jurisdiction

...

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "~~Agreement~~"; "Agreement") as amended by the Owner; addenda issued prior to execution of the Agreement; the Design-Builder's proposal and written modifications to the proposal accepted by the Owner, if any, and 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, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. The Contract Documents executed or identified herein shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Design-Builder, the Contract Documents identified in the signed contract prevail.

...

§ 1.4.7 Owner. The Owner is the ~~person or entity identified as such in the Agreement and~~ Board of Trustees of the Calallen Independent School District is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Neither the Architect nor the Contractor may rely upon the direction of any employee of Owner who has not been so designated as Owner's representative. Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work. When the plural "Contract Times" is sued, it means milestones designated in the Progress Schedule.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined. A Calendar Day is a day of twenty-four (24) hours measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven (11) hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

- .1 ~~Transportation and authorized out of town travel and subsistence; [Intentionally Deleted.]~~
- .2 ~~Dedicated data and communication services, teleconferences, Project web sites, and extranets; [Intentionally Deleted.]~~

...

- .4 ~~Printing, reproductions, plots, standard form documents; [Intentionally Deleted.]~~

...

- .8 ~~All taxes levied on professional services and on reimbursable expenses; and [Intentionally Deleted/]~~

...

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of percent (~~—~~%) _____ percent (____%) of the expenses incurred.

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid (~~—~~) thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.
(Insert rate of monthly or annual interest agreed upon.)

~~—~~ % in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of ~~two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.~~ four (4) years following substantial completion of the Project.

...

§ 3.1.3 ~~The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner. hereby covenants and agrees that it shall perform the Work in a good and workmanlike manner and in accordance with the Contract Documents. Unless otherwise provided in the Design-Build Documents, Design-Builder shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work Services. The intent of the Design-Build Documents is to include all items necessary for the proper execution and completion of the Work Services including, without limitation, all items and services that are consistent with, contemplated by, or reasonably inferable from the Design-Build Documents, whether or not such items and services are specifically mentioned therein. The Design-Build Documents are complementary, and what is required by one shall be binding as if required by all.~~

PAGE 9

§ 3.1.3.2 ~~Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines The Design-Builder shall notify the Owner in writing if the Design-Builder or Architect believes that that implementation of any instruction received from the Owner, including those in the Owner's Criteria, Owner would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6. law, statute, ordinance, building code, rule or regulation. Failure of the Design-Builder and/or its Architect to notify the Owner in such circumstances shall result in the Design-Builder being responsible to the Owner for costs and damages resulting from a violation of the applicable law statute, ordinance, building code, rule or regulation. Neither the Design-Builder nor the architect shall be obligated to perform any act which either believes will violate any applicable law.~~

...

§ 3.1.9.1 ~~The Design-Builder, promptly after execution of this Agreement, Design-Builder's initial schedule shall be provided with the proposal to the Owner's procurement package for this Project. As part of the response, the Design-Builder shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.~~ Owner and Owner's Independent

Representative information for the Design-Builder's construction schedule for the Work. The Design-Builder shall promptly after being awarded the Contract, prepare and submit for the Owner's and Owner's Independent Representative's information Design-Builder's final coordinated construction schedule for the Work. The schedule shall not exceed time limits set forth in the Design-Build Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.

- .1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Design-Builder and Owner. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Design-Builder to project cash flow for the Project.
- .2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.
- .3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .4 If any updated schedule exceeds the time limits set forth in the Design-Build Documents for completion of the Work, the Design-Builder shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Design-Builder's planned course of action for completing the Work within the time limits set forth in the Design-Build Documents. If the Design-Builder asserts that the failure of the Owner to provide information to the Design-Builder is the reason for anticipated delay in completion, the Design-Builder shall also specify what information is required from the Owner.
- .5 Neither the Owner or the Design-Builder shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Design-Builder agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.
- .6 Submission of any schedule under this Contract constitutes a representation by the Design-Builder that: (1) the schedule represents the sequence in which the Design-Builder intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed work; (3) that to the best of its knowledge and belief the Design-Builder is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Design-Builder intends to complete the remaining work in the sequence and time indicated.

PAGE 10

§ 3.1.9.3 The construction schedule shall be in a detailed precedence - style critical path method ("CPM") format satisfactory to the Owner that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Exhibit A, Design-Build Agreement. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and resubmitted for acceptance. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the

certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.
PAGE 11

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.11.6 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty

§ 3.1.12.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.2 The warranty provided in Paragraph 3.1.12.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Design-Build Documents.

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

§ 3.1.12.4 Neither the final payment nor any provision in the Design-Build Documents shall constitute an acceptance of Work not done in accordance with the Design-Build Documents or relieve the Design-Builder or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Design-Builder guarantees that the Work will conform to the Design-Build Documents.

§ 3.1.12.5 The building(s) constructed, if any, shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Design-Builder's control. The Design-Builder, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and do any work necessary to make the building(s) watertight. The Design-Builder also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the building(s) to original condition.

§ 3.1.12.6 Manufacturers' Warranties. At Final Acceptance of the Work or interim completion of a particular phase of the Work, Design-Builder shall furnish the Owner two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Owner. These Manufacturers' Warranties are in addition to and not in lieu of Design-Builder's warranty set forth in Sections 3.1.12 and 11.2.2, and the Owner is entitled to look to Design-Builder for remedy in all cases where Design-Builder's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Owner shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and Design-Builder shall cause six (6) copies of an acknowledged set to be made and furnished to the Owner. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Owner than those terms that are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Owner, or be in a freely assignable form and be assigned to the Owner without limitations.

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees—fees and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device, which is subject of patent rights or copyrights, held by others.

PAGE 12

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. **TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILFUL OR NEGLIGENT ACT OR OMISSION OF THE DESIGN-BUILDER, THE ARCHITECT, ANY CONTRACTOR OR SUBCONTRACTOR OF DESIGN-BUILDER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER.**

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts. DESIGN-BUILDER SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO DESIGN-BUILDER'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 WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS. 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 DESIGN-BUILDER'S OBLIGATIONS UNDER PARAGRAPH 3.1.14.1, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH DESIGN-BUILDER AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS PARAGRAPH AS TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY DESIGN-BUILDER TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER IS A SOLE OR CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND DESIGN-BUILDER ARE BOTH PARTIES.

§ 3.1.14.3 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Design-Builder is to comply with said statutes in performance of the Work by Design-Builder and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Design-Builder.

PAGE 14

§ 3.1.17 REPRESENTATIONS AND WARRANTIES

§ 3.1.17.1 The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Design-Build Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Design-Build Documents;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- .4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- .5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Design-Build Documents.

§ 3.1.18 BUSINESS STANDARDS

§ 3.1.18.1 Design-Builder, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Design-Builder shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Design-Builder's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

§ 3.1.19.1 Pursuant to 19 Texas Administrative Code § 61.1036, the Design-Builder shall sign and seal the Construction Documents and certify on the Certification of Project Completion form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used the best professional judgment and reasonable care consistent with the practice of engineering in the State of Texas in executing the construction documents and that these documents conform with the provisions of 19 TAC § 61.1036.
- .2 It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.
- .3 It has designed the facility according to the provisions of 19 TAC § 61.1036 based on the long-range school facility plan and/or education specifications, building code specifications, and all documented changes to the Construction Documents provided by the District.
- .4 As a condition to the Project being considered Substantially Complete, the Design-Builder shall certify on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.1.19.1.3 above.

PAGE 15

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification. design services shall include normal structural, mechanical, electrical and civil engineering services. Design-Builder shall be responsible for compliance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code Chapter 1001. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Owner, or the work installed by other contractors, is not guaranteed by the Owner. The Design-Builder shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Design-Builder's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Design-Builder without any additional cost to the Owner.

§ 4.3.3 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

PAGE 16

§ 5.1.1 Schematic Design Documents. Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents agreement, the Design-Builder shall provide for Owner's approval Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Design-Builder's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 5.1.2 The Upon the Owner's written approval of the Schematic Design Documents, the Design-Builder shall provide the Construction Documents to the Owner for the ~~Owner's information, review~~ and written approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.3 Upon submission of the design and Construction Documents Design-Builder shall be deemed to have satisfied itself as to, and to adopt and accept responsibility for, the design contained in and reflected by the Specifications and

the Drawings. In particular, but without prejudice to the generality of the foregoing, the Design-Builder hereby warrants:

- .1 That the said design is in all respects adequate, accurate, sufficient and fit for its purpose; and
- .2 That there are no ambiguities, inaccuracies or inconsistencies within or between the documents forming the Design-Build Contract; and
- .3 The Design-Builder shall work with the aforementioned design so as to procure a complete detailed design of the Work and of each and every part thereof such that the Work and each and every part thereof will jointly and severally be in all respects fit for its or their purpose and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

§ 5.1.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ 5.2.1 Commencement. ~~Except as permitted in Section 5.2.2, construction~~ Construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal. [Paragraph Deleted.]

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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 Design-Build Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and except as stated below shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that any recommended means, methods, techniques or procedures from the Owner's Independent Representative may not be safe, the Design-Builder shall coordinate first with the Owner's Independent Representatives regarding alternative plans and if the two cannot come to agreement, then the Design-Builder shall give timely notice to the Owner and Owner's Independent Representative and shall not proceed with that portion of the Work without further written instructions from the Owner and Owner's Independent Representative. If the Design-Builder is then instructed by the Owner in writing to proceed with the Owner's Independent Representative's recommended means, methods, techniques, sequences, or procedures, Owner shall be solely responsible for any loss or damage arising solely from the Owner-required means, methods, techniques, sequences or procedures.

PAGE 17

§ 5.2.5 The Design-Builder shall be responsible for correcting Work which does not conform to the Design-Build Documents.

§ 5.2.6 Startup/Commissioning. Design-Builder shall conduct a thorough and systematic performance test of each element and total system of the installed equipment in accordance with Schedule A and demonstrate that all equipment complies with the requirements of the Contract Documents. Design-Builder shall provide advance written notice of at least ten (10) business days to the Owner of the scheduled test(s). The Owner shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the equipment. Design-Builder, or its Subcontractor(s), shall correct or adjust all deficiencies in operation of the equipment identified during the course of the tests described in this Section. Design-Builder shall provide to the Owner a description of the ongoing training requirements for the site's operations and maintenance personnel necessary to maintain proper equipment performance after Final Acceptance.

...

§ 5.3.4 Prevailing Wages. Attention is called to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Design-Builder and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 5.3.4.1 In accordance therewith, the Owner has established a scale of prevailing wages which is attached as Exhibit C, and not less than this established scale must be paid on the project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

§ 5.3.4.2 If the Design-Builder or any of its Contractors or Subcontractors violates the provisions of Sections 3.4.4 or 3.4.5 above, Design-Builder shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 5.3.5 The Design-Builder shall be responsible for the actions of Design-Builder's forces and all tiers of Subcontractor's forces. The Design-Builder recognizes that the Project Site is a public-school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Design-Builder's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Design-Builder or employees or students of the Owner by employees of the Design-Builder is strictly forbidden. Any employee of the Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Design-Builder, including removal from the job site.

§ 5.3.6 The Design-Builder shall furnish a list to the Owner of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction.

§ 5.3.7 At all times during the progress of the Work Design-Builder shall assign a competent resident superintendent and any necessary assistants, all satisfactory to the Owner. Any Superintendent designee shall be identified in writing to the Owner promptly after Owner issues written Notice to Proceed. The Superintendent shall represent the Design-Builder and all directions given to him shall be binding on the Design-Builder. The designated Superintendent shall not be replaced without written notice to the Owner, except under extraordinary circumstances. The Superintendent may not be employed on any other project prior to final completion of the Work.

§ 5.3.8 Design-Builder shall provide an adequate staff for the proper coordination and expedition of the work. Owner reserves the right to require Design-Builder to dismiss from the work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Design-Build Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 5.3.9 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 5.3.10 The Owner reserves the right to utilize one or more of its employees or its Total Commissioning Authority to function in the capacity of the Owner's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

~~The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect, will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) the Owner is exempt, and (2) the Owner has provided the Design-Builder with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.~~
DESIGN-BUILDER HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF DESIGN-BUILDER OR ANY OF DESIGN-BUILDER'S SUBCONTRACTORS TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS. Design-Builder shall cooperate with Owner, take such action and execute such documents as may be necessary so that Owner may utilize its exemption for the Texas Sales and Use tax

for materials used in such project. The tax-exempt identification number for Calallen Independent School District is 1-74-6000464-1.

PAGE 19

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than ~~21~~three (3) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

...

§ 5.5.5 Notwithstanding the delivery of a survey or other documents by the Owner, Design-Builder 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. Design-Builder shall be responsible for, and shall repair at Design-Builder's own expense, any damage done to lines, cables, pipes, and pipelines identified to Design-Builder.

§ 5.5.6 The Design-Builder shall also obtain all permits and approvals associated with the Project, job sites and CHPS certification, including payment of all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the project. Design-Builder's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Design-Builder during the construction process which requires the issuance of a permit shall be at Design-Builder's sole cost.

PAGE 20

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed. **§ 5.8.1** The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.8.2 Design-Builder shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project. Design-Builder shall make such reports and records available to inspection by the Owner or its agents, within five (5) working days of request by Owner or its agents.

...

The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent to or near to the Project site. Design-Builder and all Subcontractors shall use only such entrances to the Site as are designated by the Owner. During occupied

hours, Design-Builder shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

...

~~The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.~~ § 5.10.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 5.10.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.10.3 Any part of the finished Work damaged during installation or prior to substantial completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

PAGE 21

§ 5.11.1 ~~The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract.~~ Contract and shall, not less than two (2) times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Design-Builder shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

...

§ 5.11.3 The Design-Builder shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site. Upon request of the Owner, the Design-Builder shall accompany the Owner on an inspection of the Work.

...

§ 5.13.1.1 ~~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, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation.~~ site. The Owner shall notify the Design-Builder promptly after execution of any separate contract. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

PAGE 22

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner

shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5, contractors.

...

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times and is issued on or after the Effective Date of the Design-Build Contract.

§ 6.2.2 Acceptance of a Change Order by the Design-Builder shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

3. The extent of the adjustment, if any, in the Contract Time. § 6.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section 6.3.3. The Design-Builder shall not be entitled to include overhead and profit in any Change Order, except to the extent the Change Order results from an Owner-requested change in scope.

PAGE 24

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. [Paragraph Deleted.]

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

...

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

...

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work. [Paragraph Deleted.]

...

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder. Pursuant to the requirements of Texas Business and Commerce Code Section 35.521(n)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

...

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations. The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner, at the Owner's expense.

§ 7.2.10 ~~The Owner shall purchase and maintain insurance as set forth in Exhibit B.~~ Owner shall maintain Owner's typical insurance for the facilities during the course of the Project.

PAGE 25

~~If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the non-conforming or defective Work as required by Section 11.2 or fails to complete the Work as required by Article 3 or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Design-Builder to stop the Work, Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3 entity. This right shall be in addition to, and not in restriction of, the Owner's right under paragraph 11.2.~~

...

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ~~ten-day~~ three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

PAGE 26

§ 8.1.4 The Design-Builder and the Design-Builder's surety shall be liable for and shall pay the Owner, as liquidated damages and not as a penalty, the sums hereinafter stipulated for each calendar day of delay after the date established for Substantial Completion in the Design-Build Documents until the Work is substantially complete, whether the Work is completed by Design-Builder, or by a substitute contractor after Design-Builder's abandonment of the Work or termination by the Owner for cause: **SEVEN HUNDRED FIFTY DOLLARS AND NO CENTS (\$750.00).**

~~§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. The Owner, except as provided for in this Section 8.2.1, shall not be liable to the Design-Builder for delay to the Design-Builder's Work by the act, neglect or default of the Owner, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner delay the Design-Builder in the Work, Design-Builder shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Design-Builder any compensation for such Owner-caused delays.~~

...

~~§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents. Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.~~

...

The Contract Sum is stated in the Design-Build Amendment. All costs of overtime work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Design-Build Documents, shall be and are included in the Contract Sum.

...

~~§ 9.3.1 At least ~~ten~~ thirty (30) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect ~~retainage if provided for in the Design-Build Documents.~~ retainage.~~

~~§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders. Order or Change Directives.~~

PAGE 27

~~§ 9.3.3 The Design-Builder warrants that title to all ~~Work, other than Instruments of Service,~~ Work covered by an Application for Payment will pass to the Owner no later than the time of payment. ~~The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.~~ **DESIGN-BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DESIGN-BUILDER OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO THE DESIGN-BUILDER.**~~

~~§ 9.3.4 In each Request for Payment, Design-Builder shall certify that there are no known mechanics' or materialmen's liens outstanding at the date of the Request for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmen's liens on the Work, and that releases from all subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Design-Builder.~~

§ 9.3.5 The Design-Builder shall, within ten (10) days following receipt of payment from the Owner, pay the Architect, other design professionals and all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Design-Builder's failure to make payments within such time shall constitute a material breach of this contract. Design-Builder shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the Design-Builder hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Design-Builder has failed to make payment promptly to the Design-Builder's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Design-Builder, the Owner shall be entitled to withhold payment to the Design-Builder in part or in whole to the extent necessary to protect the Owner.

§ 9.3.6 Waiver of Lien. It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

PAGE 28

- .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 Design-Build Documents.~~ Design-Build Documents;
- .8 ~~delay beyond the times set forth elsewhere in the Design-Build Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of subcontractors and insurance requirements;~~
- .9 evidence of financial inability to perform the Contract fully;
- .10 failure to submit record documents required by the Contract; or
- .11 failure of the Design-Builder to perform any other obligations of the Contract.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in subparagraph 9.5.1.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, but shall have no obligation to, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

PAGE 29

§ 9.6.7 ~~Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. The Design-Builder shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253 as set out in Exhibit B.~~

...

§ 9.8.1 ~~Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. entire Project and all systems are fully complete and fully operable permitting Owner full and~~

complete use of the entire Project, subject only to the correction or completion of minor finish work items the value of which shall in no event exceed one percent (1%) of the Contract Sum.

...

§ 9.8.5 When the Work or designated portion thereof is substantially ~~complete~~, complete as determined by the Owner, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. ~~Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents. Retainage is not due to the Design-Builder until thirty-one (31) days after final completion of the Work as set out in Paragraph 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.~~

PAGE 30

§ 9.10.1 ~~Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment. When all of the Work is finally completed and the Design-Builder is ready for a final inspection it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Design-Build Documents and the Design-Build Contract has been fully performed, the Owner will promptly approve a Certificate of Completion and a final Certificate for Payment certifying that the Project is complete and the Design-Builder is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except as otherwise agreed in writing, Owner will perform no more than three (3) inspections per building to determine whether the Work has attained Final Completion in accordance with the Design-Build Documents. If the Owner is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Design-Builder shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Design-Builder's final payment.~~

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in ~~effect~~, effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

...

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 — failure of the Work to comply with the requirements of the Design-Build Documents; or
.3 — terms of special warranties required by the Design-Build Documents. Owner shall make final payment of all
sums due the Design-Builder not more than thirty-one (31) days after the Architect's execution of a final Certificate
for Payment. Final Certificate of Payment and release of retainage will not be considered unless all testing required by
the Design-Build Documents (including project manual), project specifications, and drawing are provided in their
final format showing that all findings of noncompliance have been corrected.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

§ 9.11 AUDIT

Design-Builder agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Design-Builder agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Design-Builder and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 ALLOCATION OF OWNER'S ADDITIONAL COSTS

In addition to any liquidated damages payable to the Owner by the Design-Builder, if: (1) the Owner is required to make more than two (2) inspections for Substantial Completion; (2) the Owner is required to make more than two (2) inspections for Final Completion; or (3) the Work is not substantially complete within sixty (60) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to any Consulting Architect or other Consultant hired by the Owner for any additional inspections or services.

~~§ 10.1 Safety Precautions and Programs~~ § 10.1.1 Safety Precautions and Programs

Design-Builder shall develop a safety program applicable to each job site and to the Work to be done, review such program with Owner in advance of beginning the Work, and enforce such program at all times. Further, Design-Builder shall comply with all applicable laws and regulations including but not limited to, the standards and regulations promulgated by the Secretary of labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Design-Builder employees. Owner shall have the right, but not the obligation, to inspect Design-Builder's complete responsibility for protecting the safety and health of its employees and subcontractor.

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

§ 10.1.3 Design-Builder's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 10.1.4 Design-Builder has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

§ 10.1.5 Design-Builder will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Design-Builder to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's employees may only be considered for return to work after the Design-Builder certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Design-Builder will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 10.1.6 Design-Builder will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Education and Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

PAGE 32

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. **THE DESIGN-BUILDER SHALL PROMPTLY REMEDY DAMAGE AND LOSS (OTHER THAN DAMAGE OR LOSS INSURED UNDER PROPERTY INSURANCE REQUIRED BY THE DESIGN-BUILD DOCUMENTS) AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO PROPERTY REFERRED TO IN SECTIONS 10.2.1.2 AND 10.2.1.3, CAUSED IN WHOLE OR IN PART BY THE DESIGN-BUILDER, THE ARCHITECT, A CONTRACTOR, A SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED OR CONTRACTED BY ANY OF THEM, OR BY ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE AND FOR WHICH THE DESIGN-BUILDER IS RESPONSIBLE UNDER SECTIONS 10.2.1.2 AND 10.2.1.3, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF DESIGN-BUILDER AND OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

PAGE 33

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe ~~condition~~ condition, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ~~21~~ 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Design-Builder shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Section 756.021, et seq.

...

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall ~~may~~ obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up. Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance that the Design-Builder brings to the site and negligently handles; or (2) where the Design-Builder fails to perform the obligation under this section, except to the extent the cost and expense are due to the Owner's fault or negligence.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Subparagraph 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Subparagraph shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances site.

PAGE 34

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred. The Design-Builder shall certify in writing that no materials used in the work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Design-Builder shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

...

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. In such event, Design-Builder shall be entitled to

reimbursement of the actual costs of the goods and services necessary to prevent threatened damage, injury or loss, provided such compensation does not exceed the Contract Sum established herein.

...

- .1 If a portion of the Work has been covered and the Owner has specifically requested to see such Work, or if any known deficiencies exist, or the Design-Build Documents specifically request inspection prior to its being covered, the Owner may request to see that Work and it shall be uncovered by the Design-Builder. If the work is not in accordance with the Design-Build Documents, it must be corrected and covered at the expense of the Design-Builder. If the Work is according to the Design-Build Documents, the cost to restore cover on the Work is at the sole expense of the Design-Builder.
- .2 Where deficiencies are observed and noted, in addition to listing in the Site Visit Reports, the Owner may, at his/her own discretion, institute a "Notice to Comply" form (NTC) citing the deficiency. Only one item per notice will be listed in order to enable each individual deficiency to be tracked until corrected.

...

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

PAGE 35

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.2 for portions of Work recurring correction.

§ 11.2.2.4 Owner and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building shall have its own, separate, and independent date of Substantial Completion or Final Completion. Design-Builder shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each building which is substantially complete will expire, and dates of Final Completion for each building. Design-Builder agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building which has been substantially completed. Prior to termination of the one (1) year warranty period, Design-Builder shall accompany the Owner on re-inspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Design-Builder of deficiencies and Design-Builder shall start remedying these defects within three (3) days of initial notification from Owner. Design-Builder shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Design-Builder fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Design-Builder's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 11.2.2.5 The Design-Builder shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of paragraphs 3.1.12 and 11.2.2 for all Work under the Design-Build Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

...

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, and furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

...

§ 11.2.6 The provisions of this Paragraph 11.2 apply to Work done by subcontractors of the Design-Builder as well as work done directly by employees of the Design-Builder.

§ 11.2.7 Design-Builder's express obligation herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If, however, Owner and Design-Builder deem it inexpedient to require the correction of work damaged or not done in accordance with the Design-Build Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Design-Builder and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Design-Builder. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

PAGE 36

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. Upon execution of this Agreement, the Design-Builder grants to the Owner a nonexclusive license to reproduce the Instruments of Service for purposes of constructing, using, and maintaining the Project, and shall obtain similar, nonexclusive licenses from the Design-Builder's consultants.

- .1 The payment of fees to the Design-Builder for professional services performed under this Agreement shall constitute full payment for a one-time, perpetual license fee for those uses of the Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.
- .2 The Owner shall have the right to use the Instruments of Service and to make derivative Works thereof for the purpose of completing the Project in the event Design-Builder is terminated for cause pursuant to this Agreement, without regard to whether such termination shall subsequently be adjudicated to have been wrongful. In the event the Owner shall make derivative works of the Instruments of Service pursuant to this Paragraph, the Design-Builder shall bear no liability for errors or omissions appearing in such derivative works.

...

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate. [Paragraph Deleted.]

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, ~~provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.~~ Project.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. ~~The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.~~

§ 12.3.3 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 12.1.

PAGE 37

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. Such compensation shall include profit only on work performed prior to termination. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

...

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
or
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build ~~Documents~~; or Documents.
- .4 ~~The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.~~ [Subsection Deleted.]

...

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and ~~profit~~, profit only on Work performed prior to termination, costs incurred by reason of such termination, and damages.

...

- .2 ~~repeatedly~~-refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

- .4 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents; or
- .6 any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntary or involuntarily, or makes an assignment for the benefit of creditors, and the Design-Builder, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Design-Builder will either (i) perform the Work of such Subcontractor with the Design-Builder's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner.

...

- .3 ~~Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Design-Builder for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Design-Builder's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Design-Build Documents.

~~§ 13.2.4.3 In the case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, for profits only on that portion of the Work executed, and for reasonable costs of demobilization.~~

...

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time 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 Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.law.~~

...

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to ~~Sections 9.10.4 or Section 9.10.5~~, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

...

~~**§ 14.1.7 Claims for Consequential Damages**~~

~~The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

- ~~.2 — damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.~~

§ 14.1.6.3 The Design-Builder shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Design-Builder 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 not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 14.1.7 CALCULATING CLAIMS FOR DAMAGES

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- .4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 14.1.8 SUBCONTRACTOR PASS-THROUGH CLAIMS.

In the event that any Subcontractor of the Design-Builder asserts a claim to the Design-Builder that the Design-Builder seeks to pass through to the Owner under the Design-Build Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to the following:

- .1 the requirements of Sections 14.1.1 through 14.1.7 above; and
- .2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Design-Builder to seek and assert such claim against the Owner:
 - (i) The Design-Builder shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Design-Builder shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Design-Builder has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Design-Build Documents for any markup). The liability or responsibilities shall be identified in writing by the Design-Builder to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Design-Builder in the claim submittal materials.
 - (ii) The Design-Builder shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Design-Builder shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Design-Builder has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.
 - (iii) The subcontractor making the claim to the Design-Builder shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Design-Builder in the claim submittal materials.

Assertion of a claim by Design-Builder for pass-through of a subcontractor claim shall only be permitted to the extent payment of the claim does not result in an increase in the Contract Sum established herein.

§ 14.1.9 Any failure of the Design-Builder to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

§ 14.1.10 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Design-Build Documents or law.

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

PAGE 41

~~§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1. Upon receipt by the Design-Builder of Owner's initial decision, if Design-Builder elects not to accept such initial decision as rendered and makes a formal objection, the Design-Builder and Owner shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached, either party may request mediation of the dispute pursuant to Section 14.3.~~

~~§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. [Paragraph Deleted.]~~

...

~~§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. **Waiver of Lien.** It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.~~

...

~~§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.~~

...

§ 14.3.4 In the event the Owner and the Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred and the parties may proceed to litigate the dispute.

§ 14.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, Design-Builder may not bring a legal action against the Owner unless the Design-Builder has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Design-Builder's Claim, dispute or other matter.

§ 14.4 Arbitration [Not Applicable – Section Deleted.]

~~§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.~~

~~§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 14.4.4 Consolidation or Joinder [Not Applicable – Section Deleted.]

~~§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.~~

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.~~

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1.1 Governing Law

The Contract shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts in the County in which the Project is located. No provision of this Agreement is consent to suit.

§ 15.1.2 This Agreement is made under the authority of Subchapter I of Chapter 271 of the Texas Local Government Code. Any party hereto that prevails in the adjudication of any claim arising under this Agreement shall be entitled to recover its reasonable and necessary attorney's fees under Section 271.159 of the Texas Local Government Code. Except as provided in this Subparagraph 15.1.2, no provision of this Agreement shall waive any immunity or defense.

PAGE 42

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section ~~3.1.10~~, 3.1.10 and 3.1.19.1, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified ~~mail~~ mail, ~~return receipt requested~~, [electronic mail] or by courier service providing proof of delivery to, the last business address known to the party giving notice.

PAGE 43

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. ~~Unless otherwise provided, the Design-Builder 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 Owner will contract for, independently of the Design-Builder, the inspection services, the testing of construction materials, and the verification testing services necessary for the acceptance of the Work by the Owner.~~ The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

...

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by ~~law~~ law, including a request pursuant to the Texas Public Information Act, Government Code Chapter 552, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.6.2 Notwithstanding any provision of this Agreement to the contrary, nothing herein may be construed as a limitation on the Owner's obligations under the Texas Public Information Act, Texas Government Code Chapter 552, and no disclosure of materials as required by the Act shall constitute a breach of this Agreement. In the event District receives a request for materials identified by Design-Builder as confidential, copyrighted, trade secret, or proprietary, or which give advantage to a competitor, District shall promptly notify the Design-Builder of the request and shall permit the Design-Builder to submit to the Texas Attorney General reasons why materials should not be released pursuant to the Texas Government Code §552.305. The Owner shall not be required to submit such reasons why the materials should not be released, or to incur any expense in resisting the release of the materials.

PAGE 44

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings. Technical terms not specifically defined in the Design-Build Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms", July 1982 edition.

§ 15.9 Relationship of Parties

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

§ 15.10 REQUIRED PROVISIONS.

§ 15.10.1 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Design-Builder has at least ten (10) full time employees, then the Design-Builder, by its execution of this Agreement represents and warrants to the Owner that the Design-Builder does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 15.10.2 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 15.10.3 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Independent Consultant has at least ten (10) full-time employees, then Independent Consultant represents and warrants to the District that the Independent Consultant does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 15.10.4 Design-Builder 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 Design-Builder has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Contract.

§ 15.10.5 By signing this Agreement, the undersigned certifies as follows: Under Section 231.009 of the Texas Family Code, the Design-Builder certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld in this certification is inaccurate.

§ 15.10.6 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Design-Builder agrees that the contract can be terminated if the Design-Builder knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Design-Builder agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

§ 15.10.7 Design-Builder 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 Design-Builder has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 15.10.8 Pursuant to Texas Government Code Chapter 2273, Design-Builder represents and warrants that it not an abortion provider or an affiliate of an abortion provider.

§ 15.10.9 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

§ 15.11 CRIMINAL HISTORY RECORDS CHECKS

§ 15.11.1 Prior to the commencement of work, Design-Builder shall take all necessary steps to comply with Texas Education Code, Section 22.0834 by obtaining, if a Qualified Contractor, as defined, or arranging with Owner to obtain, if not a Qualified Contractor, national criminal history record information ("CHRI") as to Design-Builder its Contractors and Subcontractors and all persons associated with them including their employees, agents and representatives who a) have or will have continuing duties related to the contracted services; and b) have or will have direct contact with students (each a "Covered Employee").

§ 15.11.2 If the Design-Builder or any Subcontractor determines that § 15.11.1 does not apply to an employee, the Design-Builder or Subcontractor shall make a reasonable effort to ensure that the conditions or precautions that resulted in the determination that § 15.11.1 did not apply to the employee continue to exist throughout the time that the contracted services are provided.

§ 15.11.3 The requirements of § 15.11.1 do not apply if:

.1 the public work does not involve the construction, alteration, or repair of an Instructional Facility as defined by Section 46.001, Texas Education Code (real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code);

.2. for public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first day the facility will be used for instructional purposes; or

.3 for a public work that involves an existing Instructional Facility:

(a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(b) the Design-Builder adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 15.11.4 If the Design-Builder or Contractors is not a Qualified School Contractor, a person to whom § 15.11.1 applies must submit to a CHRI review by the Owner.

§ 15.11.5 Owner and Design-Builder agree to destroy any CHRI obtained or indexed by the Federal Bureau of Investigation ("FBI") or Texas Department of Public Safety ("DPS") under this § 13.1.1 after the information is used for its authorized purpose. CHRI may only be released to the individual who is the subject of the information, by court order, or as allowed by law.

§ 15.11.6 Any Covered Employee that has during the preceding thirty (30) years, (a) been convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (b) been convicted of a felony offense under Title 5, Texas Penal Code if the victim of the offense was under 18 years of age at the time the offense was committed; (c) been convicted of an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History"); shall be disqualified and prohibited from performing any contract duties or services and neither the Design-Builder nor its Contractors or Subcontractor may permit such person to provide services at an Instructional Facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Design-Builder will exclude that person from assignment to the Project. To the extent the Owner, not the Design-Builder obtains the CHRI described herein., Design-Builder understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 15.11.7 Prior to commencement of its work on the Project the Design-Builder will provide written certification to the Owner that either: (1) Design-Builder and its Contractors and Subcontractors of every tier, do not have any Covered Employees, as defined; (2) Design-Builder and its Contractor and its Subcontractors of every tier are otherwise exempt from compliance with the requirements contained herein; or (3) Design-Builder and its Contractor and its Subcontractors of every tier have complied with the statutory and contractual requirements of this Agreement as of that date.

§ 15.11.8 Design-Builder agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Design-Builder will immediately remove the Covered Employee from Owner's property or other location where students are regularly present, and notify the Owner of said removal within three (3) days of doing so. Design-Builder understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement by Owner, in accordance with Article 13, Termination.

PAGE 46

- .4 AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completedExhibit C – Prevailing Wage Rate
- .5 AIA Document E202™ 2022, BIM Exhibit for Sharing Models with Project Participants, Where Model Versions May Not be Enumerated as a Contract Document, if completed, or the following:

...

CALALLEN INDEPENDENT SCHOOL DISTRICT
EXHIBIT ONLY – NOT FOR EXECUTION

CONTRACTOR:
TO BE DETERMINED -- EXHIBIT TO BID PACKAGE ONLY

EXHIBIT ONLY – NOT FOR EXECUTION

...

Emily Lorenz, Superintendent of Schools

Name: _____ Title : _____

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Kelley L. Kalchthaler, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:59:50 ET on 04/23/2025 under Order No. 3104241723 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA[®] Document A141[®] – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141TM-2014, Standard Form of Agreement Between Owner and Design-Builder dated the _____ day of _____ in the year TWO THOUSAND TWENTY-FIVE (2024) (the "Agreement")
(In words, indicate day, month and year.)

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

Calallen Independent School District (2024 Bond Project)
CISD Stadium Scoreboard and Sound System Project

THE OWNER:
(Name, legal status and address)

Calallen Independent School District, a political subdivision and public school district of the State of Texas
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600

THE DESIGN-BUILDER:
(Name, legal status and address)

TO BE DETERMINED – EXHIBIT FOR PROCUREMENT ONLY
Company Legal Name; _____
Address: _____
Phone: _____

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section A.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- Cost of the Work plus the Design-Builder's Fee and General Conditions with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be (\$), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

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§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

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§ A.1.4 Cost of the Work Plus Design-Builder's Fee and General Conditions With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

(Paragraphs deleted)

§ A.1.4.2.1 The Design-Builder's Fee shall be _____ percent (____%) of the actual cost of the Work as defined in Article A.5.

§ A.1.4.2.2 The Design-Builder's compensation for general conditions shall be _____ percent (____%) of the actual Cost of the Work as defined in Article 6. [Notwithstanding any other provision of the contract documents, the work included in general conditions for which the Design-Builder is compensated under this section 5.1.1.2 are described in Schedule "A" attached hereto.]

§ A.1.4.2.3 The actual Cost of the Work does not include the Design-Builder's fee or compensation for general conditions.

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee and General Conditions is guaranteed by the Design-Builder not to exceed _____ AND ____ DOLLARS (\$ _____), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

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§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price. *(Provide information below or reference an attachment.)*

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§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

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§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
DRAFT FOR PROCUREMENT ONLY		

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

DRAFT FOR PROCUREMENT ONLY

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

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§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of percent (%) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

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- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than thirty (30) days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within thirty (30) days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven (7) days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

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Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

DRAFT FOR PROCUREMENT ONLY

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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None.

Other identifying information:

None.

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

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.2 Contingencies

DRAFT FOR PROCUREMENT ONLY

§ A.3.1.6 Design-Builder's assumptions and clarifications:

DRAFT FOR PROCUREMENT ONLY

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

DRAFT FOR PROCUREMENT ONLY

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

DRAFT FOR PROCUREMENT ONLY

.2 Project Manager

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.3 Others

DRAFT FOR PROCUREMENT ONLY

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

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ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2

(Paragraphs deleted)

(Paragraph Deleted.)

(Table deleted)

§ A.5.1.1.3 *(Paragraph Deleted.)*

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.1.

§ A.5.1.1.5 *(Paragraph Deleted.)*

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

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§ **A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ **A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ **A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ **A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ **A.5.1.4.1** (Paragraph Deleted.)

§ **A.5.1.4.2** (Paragraph Deleted.)

§ **A.5.1.4.3** (Paragraph Deleted.)

§ **A.5.1.4.4** (Paragraph Deleted.)

§ **A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ **A.5.1.5 Miscellaneous Costs**

§ **A.5.1.5.1** (Paragraph Deleted.)

§ **A.5.1.5.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Owner is not exempt under Texas law.

§ **A.5.1.5.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ **A.5.1.5.4** (Paragraph Deleted.)

§ **A.5.1.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents.

§ **A.5.1.5.6** (Paragraph Deleted.)

§ **A.5.1.5.7** (Paragraph Deleted.)

§ **A.5.1.5.8** (Paragraph Deleted.)

§ **A.5.1.5.9** (Paragraph Deleted.)

§ **A.5.1.5.10** (Paragraph Deleted.)

§ **A.5.1.6 Other Costs and Emergencies**

§ **A.5.1.6.1** (Paragraph Deleted.)

§ **A.5.1.6.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ **A.5.1.6.3** (Paragraph Deleted.)

§ **A.5.1.7 Related Party Transactions**

§ **A.5.1.7.1** For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any

Init.

person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

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§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services 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.

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

CALALLEN INDEPENDENT SCHOOL DISTRICT

TO BE DETERMINED – EXHIBIT ONLY

CONTRACTOR: _____

NOT FOR EXECUTION – EXHIBIT ONLY

NOT FOR EXECUTION – EXHIBIT ONLY

OWNER (Signature)

DESIGN-BUILDER (Signature)

Emily Lorenz, Superintendent of Schools

(Printed name and title)

Name: _____ Title: _____

(Printed name and title)

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:00:09 ET on 04/23/2025.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the _____ day of _____ in the year TWO THOUSAND TWENTY-FIVE (2024) (the "Agreement")

...

Calallen Independent School District (2024 Bond Project)
CISD Stadium Scoreboard and Sound System Project

...

Calallen Independent School District, a political subdivision and public school district of the State of Texas
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600

...

TO BE DETERMINED – EXHIBIT FOR PROCUREMENT ONLY

Company Legal Name: _____

Address: _____

Phone: _____

...

A.5 COST OF THE WORK

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

PAGE 2

[] Cost of the Work plus the Design-Builder's Fee and General Conditions with a Guaranteed Maximum Price, in accordance with ~~Section A.1.4~~ Section A.1.4 below

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~~§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price~~

§ A.1.4 Cost of the Work Plus Design-Builder's Fee and General Conditions With a Guaranteed Maximum Price

~~§ A.1.4.2 The Design-Builder's Fee:~~

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4.2.1 The Design-Builder's Fee shall be _____ percent (____ %) of the actual cost of the Work as defined in Article A.5.

§ A.1.4.2.2 The Design-Builder's compensation for general conditions shall be _____ percent (____ %) of the actual Cost of the Work as defined in Article 6. [Notwithstanding any other provision of the contract documents, the work included in general conditions for which the Design-Builder is compensated under this section 5.1.1.2 are described in Schedule "A" attached hereto.]

§ A.1.4.2.3 The actual Cost of the Work does not include the Design-Builder's fee or compensation for general conditions.

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee and General Conditions is guaranteed by the Design-Builder not to exceed (\$ _____), AND _____ DOLLARS (\$ _____), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

PAGE 3

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PAGE 4

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§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ~~(—)forty-five (45)~~ days after the Owner receives the Application for Payment.

PAGE 5

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PAGE 6

- 3 Add the Design-Builder's Fee, less retainage of ~~percent (—%)~~ five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 Subtract retainage of ~~percent (—%)~~ five percent (5%) from that portion of the Work that the Design-Builder self-performs;

...

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than ~~30-thirty (30)~~ days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within ~~30-thirty (30)~~ days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven (7) days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

PAGE 7

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None.

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None.

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PAGE 8

DRAFT FOR PROCUREMENT ONLY

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§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

(Paragraph Deleted.)

<u>Person Included</u>	<u>Status (full-time/part-time)</u>	<u>Rate (\$0.00)</u>	<u>Rate (unit of time)</u>
------------------------	-------------------------------------	----------------------	----------------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. (Paragraph Deleted.)

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under ~~Section A.5.1.1.~~ Section A.5.1.1.1.

~~§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.(Paragraph Deleted.)~~

PAGE 9

~~§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design Builder shall mean fair market value.(Paragraph Deleted.)~~

~~§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design Builder owned item may not exceed the purchase price of any comparable item. Rates of Design Builder owned equipment and quantities of equipment shall be subject to the Owner's prior approval.(Paragraph Deleted.)~~

~~§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.(Paragraph Deleted.)~~

~~§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.(Paragraph Deleted.)~~

...

~~§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design Build Documents.(Paragraph Deleted.)~~

~~§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design Builder is liable.Owner is not exempt under Texas law.~~

...

~~§ A.5.1.5.4 Fees of laboratories for tests required by the Design Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design Build Documents, and which do not fall within the scope of Section A.5.1.6.3.(Paragraph Deleted.)~~

~~§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design Build Documents; and payments made in accordance with legal judgments against the Design Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design Build Documents, then they shall not be included in the Cost of the Work.Documents.~~

~~§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.(Paragraph Deleted.)~~

~~§ A.5.1.5.7 Deposits lost for causes other than the Design Builder's negligence or failure to fulfill a specific responsibility in the Design Build Documents.(Paragraph Deleted.)~~

~~§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and~~

~~Design Builder, reasonably incurred by the Design Builder after the execution of the Agreement and in the performance of the Work.(Paragraph Deleted.)~~

~~§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design Builder's personnel required for the Work.(Paragraph Deleted.)~~

~~§ A.5.1.5.10 That portion of the reasonable expenses of the Design Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.(Paragraph Deleted.)~~

...

~~§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.(Paragraph Deleted.)~~

...

~~§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design Builder and only to the extent that the cost of repair or correction is not recovered by the Design Builder from insurance, sureties, Contractors, suppliers, or others.(Paragraph Deleted.)~~

PAGE 10

- .5 ~~Except as provided in Section A.5.1.6.3 of this Agreement, costs~~ Costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

...

~~§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder-Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.~~

PAGE 11

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law.

...

CALALLEN INDEPENDENT SCHOOL DISTRICT

TO BE DETERMINED – EXHIBIT ONLY

CONTRACTOR:

NOT FOR EXECUTION – EXHIBIT ONLY

NOT FOR EXECUTION – EXHIBIT ONLY

...

Emily Lorenz, Superintendent of Schools

Name:

Title:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Kelley L. Kalchthaler, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:00:09 ET on 04/23/2025 under Order No. 3104241723 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®]

Document A141[®] – 2014 Exhibit B

Insurance and Bonds

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

Calallen Independent School District (2024 Bond Project)
CISD Stadium Scoreboard and Sound System Project

THE OWNER:
(Name, legal status and address)

Calallen Independent School District, a political subdivision and public school district of the State of Texas
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600

THE DESIGN-BUILDER:
(Name, legal status and address)

TO BE DETERMINED – EXHIBIT FOR PROCUREMENT ONLY

Company Legal Name: _____
Address: _____
Phone: _____

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the _____ day of _____ in the year TWO THOUSAND TWENTYFIVE (2025).
(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN-BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN-BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.2.1.1 Workers' Compensation and Employers Liability Insurance Coverage.

.1 Definitions:

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

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

.3 The Design-Builder must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

.4 If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the Project, the Design-Builder must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

.5 The Design-Builder shall obtain from each person providing services on a Project, and provide to the governmental entity:

- .5.1 a certificate of coverage, prior to that person beginning work on the Project, so the

- governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .5.2 no later than seven (7) days after receipt by the Design-Builder, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
 - .6 The Design-Builder shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
 - .7 The Design-Builder shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Design-Builder knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
 - .8 The Design-Builder shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
 - .9 The Design-Builder shall contractually require each person with whom it contracts to provide services on a Project, to:
 - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .9.2 provide to the Design-Builder, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - .9.3 provide the Design-Builder, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .9.4 obtain from each other person with whom it contracts, and provide to the Design-Builder:
 - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - .9.6 notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
 - .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Design-Builder is representing to the governmental entity that all employees of the Design-Builder who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Design-Builder to administrative penalties, criminal penalties, civil penalties, or other civil actions.
 - .11 The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder which entitles the governmental entity to declare the contract void if the Design-Builder does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity. [28 TAC §110.110(c)(7)]

§ B.2.1.2 Design-Builder shall provide Commercial General Liability Insurance, including coverage for Personal Injury Liability, Independent Design-Builder's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Design-Builder's (or Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties in the following amounts:

Commercial General Liability:

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
Personal & Advertising Injury	\$1,000,000.00 each person
Products and Completed Operations	\$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Independent Contractors	(Same limits as above)
Contractual Liability	(Same limits as above)

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by the Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner shall be named, by way of endorsement, as an additional insured. The general liability policy shall also include coverage extended to apply to completed operations, asbestos hazards (if the project involves work with asbestos), and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement to extend the policy's limits specifically to the project in question.

§ B.2.1.3 Comprehensive Automobile Liability Insurance (owned, non-owned and hired vehicles). With coverage as follows:

Automobile Liability:

Bodily Injury/Property Damage	\$1,000,000.00 combined single limit
Property Damage	\$1,000,000.00 each occurrence

Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed to include a waiver of subrogation against Owner and shall include the Owner as an additional insured.

§ B.2.1.4 Builder's Risk Coverage: In addition to the insurance described above, the Design-Builder shall obtain at its expense, and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the project involves materials and supplies needed for additions to, or renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, the Owner shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be written jointly in the names of the Owner, the Design-Builder, Subcontractors, and Sub-Subcontractors as their interests may appear. The policy shall have endorsements as follows:

- .1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- .2 Loss, if any, shall be adjusted with and made payable to the Owner as trustee for the insureds as their interests may appear.
- .3 The right of subrogation under the policy shall be waived as to the Owner.

§ B.2.1.5 Umbrella/Excess Liability Coverage. The Design-Builder shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Design-Builder for an amount of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner, by way of endorsement, shall be named as an additional insured. No aggregate shall be permitted for this type of coverage. The

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policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

§ B.2.1.6 GENERAL INSURANCE POLICY REQUIREMENTS

(Paragraphs deleted)

§ B.2.1.6.1 Notice of Cancellation to Owner. Prior to commencing any work, Design-Builder shall furnish to Owner at the address shown below Certificates of Insurance and if requested by Owner a copy of the actual policies (or other evidence deemed sufficient by the Owner) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Design-Build Documents, certifying compliance with the minimum required coverage. Design-Builder shall notify the Owner in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide the Owner thirty (30) days advance written notice of such cancellation or reduction.

§ B.2.1.6.2 Company Rating. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better, if Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Design-Builder in accordance with this Contract on the basis of its not complying with the Design-Build Documents, Owner will notify Design-Builder in writing thereof. Design-Builder will provide to Owner such additional information in respect of insurance provided by him as Owner may reasonably request.

§ B.2.1.6.3 If Design-Builder fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the Owner may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the Owner is an alternative to other remedies the Owner may have, and is not the exclusive remedy for failure of Design-Builder to maintain said insurance or secure such endorsement. In addition to any other remedies the Owner may have upon Design-Builder's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Owner shall have the right to order Design-Builder to stop work hereunder, and/or withhold any payment(s) which become due, to Design-Builder hereunder until Design-Builder demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which Design-Builder may be held responsible for payments of damages to persons or property resulting from Design-Builder's performance of the Work covered under this Agreement.

§ B.2.1.6.4 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Design-Builder.

§ B.2.1.6.5 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Design-Builder and not covered by insurance shall be paid by the Design-Builder.

§ B.2.1.6.6 If any insurance company for the Design-Builder, which company provides insurance required under the Design-Build Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Design-Builder shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

§ B.2.1.6.7 Each insurance policy to be furnished by the Design-Builder shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

- .1 That the Owner shall be named as an additional insured on all liability coverages.
- .2 Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation,

nonrenewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail. Design-Builder shall also notify Owner, within twenty-four (24) hours after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.

- .3 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Design-Builder as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.
- .4 All provisions of the Design-Build Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

§ B.2.1.6.8 Concerning the insurance to be furnished by the Design-Builder, it is a condition precedent to acceptability that:

- .1 All policies must comply with the applicable requirements and special provisions of this Article.
- .2 Any policy evidenced by a certificate of insurance or submitted for review shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and the Owner's decision regarding whether any policy contains such provisions, contrary to this requirement, shall be final.
- .3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that are otherwise acceptable to the Owner.

§ B.2.1.6.9 The Design-Builder agrees to the following special provisions:

- .1 The Design-Builder hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article.
- .2 Insurance companies issuing the insurance policies and the Design-Builder shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Design-Builder.
- .3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Design-Builder (or any subcontractors) shall not relieve the Design-Builder of any responsibility or liability for damage or accidents as set forth in the Design-Build Documents. The bankruptcy, insolvency or denial of liability of or by the Design-Builder's insurance company shall likewise not exonerate or relieve the Design-Builder from liability.
- .4 The Owner reserves the right to review the insurance requirements of this Article during the effective period of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the Owner, based upon changes in statutory law, court decisions or the claims history of the field as well as that of the Design-Builder. The Design-Builder agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Design-Builder shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
- .5 No special payments shall be made for any insurance policies that the Design-Builder and subcontractors are required to carry; all are included in the Contract Sum.

§ B.2.1.6.10 Any insurance policies required under this Article may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

§ B.2.2.1 The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total combined accepted bid(s).

§ B.2.2.2 The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total bid as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ B.2.2.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this project.

§ B.2.2.4 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ B.2.2.5 All bonds will be reviewed by the Owner for compliance with the Design-Build Documents prior to execution of the contract.

§ B.2.2.6 All bonds shall be originals. The Design-Builder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ B.2.2.7 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ B.2.2.8 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Design-Builder's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Design-Builder shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Design-Builder may be suspended, and all payment or money due to the Design-Builder withheld.

§ B.2.2.9 By inclusion of this Subparagraph B.2.2.9 in the Design-Build Documents, the surety which issues the bonds is hereby notified that the Owner, and its agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Design-Builder and the Owner. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner its agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Design-Builder, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§ B.2.2.10 Notwithstanding any provision to the contrary contained in the bond or the bonded contract, the bond guarantees only the performance of the installation portion of the contract[, and shall not be construed to guarantee the performance of (i) any efficiency or energy savings guarantees, (ii) any support or maintenance service agreement, or (iii) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the contract].

ARTICLE B.3 OWNER'S INSURANCE [Section Deleted.]

(Paragraphs deleted)

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

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User Notes:

(1095727687)

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:59:35 ET on 04/23/2025.

PAGE 1

Calallen Independent School District (2024 Bond Project)
CISD Stadium Scoreboard and Sound System Project

...

Calallen Independent School District, a political subdivision and public school district of the State of Texas
4205 Wildcat Drive
Corpus Christi, Texas 78410
Phone: (361) 242-5600

(Name, legal status and address)

TO BE DETERMINED – EXHIBIT FOR PROCUREMENT ONLY

Company Legal Name: _____

Address: _____

Phone: _____

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the _____ day of _____ in the year TWO THOUSAND TWENTYFIVE (2025).

...

B.2 DESIGN-BUILDER'S DESIGN-BUILDER'S INSURANCE AND BONDS

...

B.4 SPECIAL TERMS AND CONDITIONS

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

PAGE 2

~~ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS~~

~~ARTICLE B.2 DESIGN-BUILDER'S INSURANCE AND BONDS~~

...

~~§ B.2.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate providing coverage for claims including Workers' Compensation and Employers Liability Insurance Coverage.~~

.1 Definitions:

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

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

.3 The Design-Builder must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

.4 If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the Project, the Design-Builder must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

.5 The Design-Builder shall obtain from each person providing services on a Project, and provide to the governmental entity:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Design-Builder, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Design-Builder shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

- ~~.4 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;~~ .7 The Design-Builder shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Design-Builder knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- ~~.8~~ The Design-Builder shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- ~~.9~~ The Design-Builder shall contractually require each person with whom it contracts to provide services on a Project, to:
- .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .9.2 provide to the Design-Builder, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - .9.3 provide the Design-Builder, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .9.4 obtain from each other person with whom it contracts, and provide to the Design-Builder:
 - ~~.2 personal injury;~~ (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - ~~.3 damages because of injury to or destruction of tangible property;~~ (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - .9.6 notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- ~~.4 bodily injury or property damage arising out of completed operations; and~~ .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Design-Builder is representing to the governmental entity that all employees of the Design-Builder who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Design-Builder to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- ~~.5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.~~ .11 The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder which entitles the governmental entity to declare the contract void if the Design-Builder does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity. [28 TAC §110.110(c)(7)]

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than (\$) per claim and (\$) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage. Design-Builder shall provide Commercial General Liability Insurance, including coverage for Personal Injury Liability, Independent Design-Builder's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Design-Builder's (or

Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties in the following amounts:

Commercial General Liability:

<u>Each Occurrence</u>	<u>\$1,000,000.00</u>
<u>General Aggregate</u>	<u>\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)</u>
<u>Personal & Advertising Injury</u>	<u>\$1,000,000.00 each person</u>
<u>Products and Completed Operations</u>	<u>\$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)</u>
<u>Property Damage</u>	<u>\$1,000,000.00 each occurrence</u> <u>\$2,000,000.00 aggregate</u>
<u>Independent Contractors</u>	<u>(Same limits as above)</u>
<u>Contractual Liability</u>	<u>(Same limits as above)</u>

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by the Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner shall be named, by way of endorsement, as an additional insured. The general liability policy shall also include coverage extended to apply to completed operations, asbestos hazards (if the project involves work with asbestos), and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement to extend the policy's limits specifically to the project in question.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2. Comprehensive Automobile Liability Insurance (owned, non-owned and hired vehicles). With coverage as follows:

Automobile Liability:

<u>Bodily Injury/Property Damage</u>	<u>\$1,000,000.00 combined single limit</u>
<u>Property Damage</u>	<u>\$1,000,000.00 each occurrence</u>

Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed to include a waiver of subrogation against Owner and shall include the Owner as an additional insured.

§ B.2.1.4 ~~Workers' Compensation at statutory limits.~~ Builder's Risk Coverage: In addition to the insurance described above, the Design-Builder shall obtain at its expense, and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the project involves materials and supplies needed for additions to, or renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, the Owner shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be written jointly in the names of the Owner, the Design-Builder, Subcontractors, and Sub-Subcontractors as their interests may appear. The policy shall have endorsements as follows:

- .1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- .2 Loss, if any, shall be adjusted with and made payable to the Owner as trustee for the insureds as their interests may appear.
- .3 The right of subrogation under the policy shall be waived as to the Owner.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

Umbrella/Excess Liability Coverage. The Design-Builder shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Design-Builder for an amount of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner, by way of endorsement, shall be named as an additional insured. No aggregate shall be permitted for this type of coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

~~§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

GENERAL INSURANCE POLICY REQUIREMENTS

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$) per claim and (\$) in the aggregate.~~

~~§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.~~

~~§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.~~

~~§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.~~

§ B.2.1.6.1 Notice of Cancellation to Owner. Prior to commencing any work, Design-Builder shall furnish to Owner at the address shown below Certificates of Insurance and if requested by Owner a copy of the actual policies (or other evidence deemed sufficient by the Owner) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Design-Build Documents, certifying compliance with the minimum required coverage. Design-Builder shall notify the Owner in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide the Owner thirty (30) days advance written notice of such cancellation or reduction.

§ B.2.1.6.2 Company Rating. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better, if Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Design-Builder in accordance with this Contract on the basis of its not complying with the Design-Build Documents, Owner will notify Design-Builder in

writing thereof. Design-Builder will provide to Owner such additional information in respect of insurance provided by him as Owner may reasonably request.

§ B.2.1.6.3 If Design-Builder fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the Owner may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the Owner is an alternative to other remedies the Owner may have, and is not the exclusive remedy for failure of Design-Builder to maintain said insurance or secure such endorsement. In addition to any other remedies the Owner may have upon Design-Builder's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Owner shall have the right to order Design-Builder to stop work hereunder, and/or withhold any payment(s) which become due, to Design-Builder hereunder until Design-Builder demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which Design-Builder may be held responsible for payments of damages to persons or property resulting from Design-Builder's performance of the Work covered under this Agreement.

§ B.2.1.6.4 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Design-Builder.

§ B.2.1.6.5 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Design-Builder and not covered by insurance shall be paid by the Design-Builder.

§ B.2.1.6.6 If any insurance company for the Design-Builder, which company provides insurance required under the Design-Build Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Design-Builder shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

§ B.2.1.6.7 Each insurance policy to be furnished by the Design-Builder shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

- .1 That the Owner shall be named as an additional insured on all liability coverages.
- .2 Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail. Design-Builder shall also notify Owner, within twenty-four (24) hours after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.
- .3 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Design-Builder as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.
- .4 All provisions of the Design-Build Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

§ B.2.1.6.8 Concerning the insurance to be furnished by the Design-Builder, it is a condition precedent to acceptability that:

- .1 All policies must comply with the applicable requirements and special provisions of this Article.
- .2 Any policy evidenced by a certificate of insurance or submitted for review shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and the Owner's decision regarding whether any policy contains such provisions, contrary to this requirement, shall be final.
- .3 All policies required are to be written through companies duly authorized and approved to transact that

class of insurance in the State of Texas and that are otherwise acceptable to the Owner.

§ B.2.1.6.9 The Design-Builder agrees to the following special provisions:

- .1 The Design-Builder hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article.
- .2 Insurance companies issuing the insurance policies and the Design-Builder shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Design-Builder.
- .3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Design-Builder (or any subcontractors) shall not relieve the Design-Builder of any responsibility or liability for damage or accidents as set forth in the Design-Build Documents. The bankruptcy, insolvency or denial of liability of or by the Design-Builder's insurance company shall likewise not exonerate or relieve the Design-Builder from liability.
- .4 The Owner reserves the right to review the insurance requirements of this Article during the effective period of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the Owner, based upon changes in statutory law, court decisions or the claims history of the field as well as that of the Design-Builder. The Design-Builder agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Design-Builder shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
- .5 No special payments shall be made for any insurance policies that the Design-Builder and subcontractors are required to carry; all are included in the Contract Sum.

§ B.2.1.6.10 Any insurance policies required under this Article may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

PAGE 7

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made. The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total combined accepted bid(s).

§ B.2.2.2 The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total bid as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ B.2.2.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this project.

§ B.2.2.4 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's

capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ B.2.2.5 All bonds will be reviewed by the Owner for compliance with the Design-Build Documents prior to execution of the contract.

§ B.2.2.6 All bonds shall be originals. The Design-Builder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ B.2.2.7 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ B.2.2.8 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Design-Builder's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Design-Builder shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Design-Builder may be suspended, and all payment or money due to the Design-Builder withheld.

§ B.2.2.9 By inclusion of this Subparagraph B.2.2.9 in the Design-Build Documents, the surety which issues the bonds is hereby notified that the Owner, and its agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Design-Builder and the Owner. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner its agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Design-Builder, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§ B.2.2.10 Notwithstanding any provision to the contrary contained in the bond or the bonded contract, the bond guarantees only the performance of the installation portion of the contract[, and shall not be construed to guarantee the performance of (i) any efficiency or energy savings guarantees, (ii) any support or maintenance service agreement, or (iii) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the contract].

ARTICLE B.3 OWNER'S INSURANCE [Section Deleted.]

~~§ B.3.1 Owner's Liability Insurance~~

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~

~~§ B.3.2 Property Insurance~~

~~§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.~~

~~§ B.3.2.1.1~~ The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design Builder's services and expenses required as a result of such insured loss.

~~§ B.3.2.1.2~~ If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

~~§ B.3.2.1.3~~ The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

~~§ B.3.2.1.4~~ Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

~~§ B.3.2.2~~ **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design Builder shall be named insureds.

~~§ B.3.2.3~~ If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design Builder in writing prior to any construction that is part of the Work. The Design Builder may then obtain insurance that will protect the interests of the Owner, Design Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

~~§ B.3.2.4~~ **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

~~§ B.3.2.5~~ 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, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

~~§ B.3.2.6~~ Before an exposure to loss may occur, the Owner shall file with the Design Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

~~§ B.3.2.7~~ **Waivers of Subrogation.** The Owner and Design Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, 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 covered by

property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

~~§ B.3.2.8~~ 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 and of Section B.3.2.10. The Design Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design Builder, and by appropriate agreements, written where legally required for validity, the Design Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

~~§ B.3.2.9~~ If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

~~§ B.3.2.10~~ The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

PAGE 8

DRAFT FOR PROCUREMENT

EXHIBIT C

*To AIA® Document A141® – 2014
Standard Form of Agreement Between Owner and Design-Builder, as Modified by Owner*

Owner: Calallen Independent School District

Design-Builder: [REDACTED]

Independent Design Representative: Wallace R. Wilkerson, Inc. (d/b/a
Wilkerson & Sanders, Inc.)

Project: Calallen ISD Stadium Scoreboard and Sound System Project

PREVAILING WAGE RATE SCHEDULE



PROMOTING EXCELLENCE • CREATING THE FUTURE

**CALALLEN ISD
PREVAILING WAGE RATE SCHEDULE (as of April 23, 2025)**

Please note that fringes are only required to be paid on projects that involve federal funds. If you are unsure about whether the project will be using federal funds, please inquire and seek clarification.

General Decision Number: TX20250288 03/14/2025

Superseded General Decision Number: TX20240288

State: Texas

Construction Type: Building

Counties: Aransas, Nueces and San Patricio Counties in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on	Executive Order 13658

or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:

generally applies to the contract. The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025
1	03/14/2025

* BOIL0074-003 01/01/2025

	Rates	Fringes
BOILERMAKER.....	\$ 33.17	24.92

 ELEC0278-002 08/25/2024

	Rates	Fringes
ELECTRICIAN.....	\$ 30.80	8.97

 ENGI0178-005 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 32.85	13.10
(2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above.....	\$ 28.75	10.60
(3) Hydraulic cranes 59 Tons and under.....	\$ 32.35	13.10

 IRON0084-011 06/01/2024

	Rates	Fringes
IRONWORKER, ORNAMENTAL.....	\$ 28.26	8.13

* SUTX2014-068 07/21/2014

	Rates	Fringes
BRICKLAYER.....	\$ 20.04	0.00
CARPENTER.....	\$ 15.21 **	0.00
CEMENT MASON/CONCRETE FINISHER.....	\$ 15.33 **	0.00
INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
IRONWORKER, REINFORCING.....	\$ 12.27 **	0.00
IRONWORKER, STRUCTURAL.....	\$ 22.16	5.26
LABORER: Common or General.....	\$ 9.68 **	0.00
LABORER: Mason Tender - Brick.....	\$ 11.36 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.58 **	0.00
LABORER: Pipelayer.....	\$ 12.49 **	2.13
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 14.25 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 13.93 **	0.00
OPERATOR: Bulldozer.....	\$ 18.29	1.31
OPERATOR: Drill.....	\$ 16.22 **	0.34
OPERATOR: Forklift.....	\$ 14.83 **	0.00
OPERATOR: Grader/Blade.....	\$ 13.37 **	0.00
OPERATOR: Loader.....	\$ 13.55 **	0.94
OPERATOR: Mechanic.....	\$ 17.52 **	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 12.70 **	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 14.45 **	0.00
PIPEFITTER.....	\$ 25.80	8.55

	Rates	Fringes
PLUMBER.....	\$ 25.64	8.16
ROOFER.....	\$ 13.75 **	0.00
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 22.73	7.52
SHEET METAL WORKER, Excludes HVAC Duct Installation.....	\$ 21.13	6.53
TILE FINISHER.....	\$ 11.22 **	0.00
TILE SETTER.....	\$ 14.74 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage

determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the

example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

- 1) Has there been an initial decision in the matter? This can be:
- a) a survey underlying a wage determination
 - b) an existing published wage determination
 - c) an initial WHD letter setting forth a position on a wage determination matter
 - d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

- 2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

- 3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

END OF GENERAL DECISION"