TOMBALL INDEPENDENT SCHOOL DISTRICT

RFP-CSP #1006 - 26 Issued: October 5, 2026

REQUEST FOR COMPETITIVE SEALED PROPOSALS FOR TOMBALL HS MULTI-PROGRAM ACTIVITY CENTER (MPAC) FACILITY

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I. INTRODUCTION

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

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

C. Project Information: The Owner plans to build a new Multi-Program Activity Center Facility, approximately 72,000 sf. While the project is consolidated onto Tomball High School's campus, the facility will be located on an undeveloped portion of the Owner's property. The Project may include the following general scope items:

1. Site utilities, Concrete paving
2. Foundation/Footings
3. PEMB, Structural Frame
4. Metal fabrications
5. Masonry, face brick veneer
6. Metal wall and roof panels
7. Aluminum, glass and window wall
8. Modified Bitumen roofing
9. Synthetic Turf Installation
10. Interior Walls
11. Tile, resilient flooring, carpeting
12. Suspended drywall, lay-in panels, sound absorbing units
13. Steel doors and frames, wood doors, Overhead coiling doors
14. Specialties
15. Automatic sprinkler system
16. Detention, storm sewer utilities
17. Plumbing systems
18. Electrical, telecommunications systems and emergency power
19. HVAC Systems and building automation
20. Fire detection alarm and emergency call systems

D. The substantial completion date is stated in the proposal form

E. The Owner's estimated cost of construction $19,000,000.00.

F. ARCHITECT:

1. PBK Architects, 11 Greenway Plaza
Houston, TX 77070

G. PROGRAM MANAGER: (Owner's Representative)

1. Lockwood, Andrews & Newnam, Inc. • 3700 W. Sam Houston Pkwy. S • Suite 400 Houston, Texas 77042 • 713-266-6900

II. RFP ADVERTISEMENT, AVAILABILITY, AND DELIVERY

[Editors Note: Choose from one of the two options below regarding physical delivery of proposals or online-only delivery of proposals. Verify that you have addressed one-step or two-step submittal processes correctly in the case on online bids to allow the Projectmates software to have TWO SEPARATE BIDS. Have this section quality control checked by a peer]

A. Proposal/Contract Documents, including Drawings, Technical Specifications, and Addenda are available for download from Tomball ISD's website: https://www.tomballisd.net/about-tisd/departments/finance/purchasing/bids-and-proposals

B. Responses are due in two parts; Part 1: Price proposal and required Forms, Part 2: Alternates and Key Subcontractors. Responses are due as described in RFQ section III PROBABLE SCHEDULE OF EVENTS. All responses must be provided in a sealed envelope/package with RFP-CSP #1006 - 26 clearly printed on the face of the package and delivered to:

Attention: Zachary Boles, CFO
Tomball ISD Ancillary Services Building
RFP-CSP #1006-26 Tomball HS Muli-Program Activity Center (MPAC) Facility
1110 Baker Dr.
Tomball, TX 77375

C. Responses are due as described in RFQ section III PROBABLE SCHEDULE OF EVENTS

D. Questions concerning this RFP shall be directed to the Owner's Program Manager, in writing, to the email address below. Questions concerning the Contract Documents shall be addressed to the Architect, in writing, to the email address below. Verbal questions and explanations are not permitted other than as described by this section, if any. All questions are due as described in RFQ section III PROBABLE SCHEDULE OF EVENTS. Answers to questions will be issued in an Addendum by the Architect/Engineer for the Project and will be posted on the Owner's Website as described in RFQ section III PROBABLE SCHEDULE OF EVENTS.

Questions concerning the RFP
Owner's Program Manager Contact Person is:

Victor Fleming, CCM
Program Manager
Lockwood Andrews & Newnam, Inc.
FOR: Tomball Independent School District
1110 Baker Dr.
Tomball, TX 77375
Email: vcfleming@lan-inc.com

Questions concerning the Contract Documents
Architect's Contact Person is:

Mark Menchaca – Sr. Associate/Sr. Project Manager
PBK Architects
11 Greenway Plaza
Suite 350
Houston, TX 77070
Email: mark.menchaca@pbk.com

III. PROBABLE SCHEDULE OF EVENTS

- Tuesday, October 27, 2026 - Release Request for Proposals.

- Friday, October 30, 2026 - and Friday, November 6, 2026 – Advertisement Dates.

- Tuesday, November 10, 2026 @ 10:00 a.m. local time –Pre-Proposal Conference. The Pre-Proposal meeting agenda will include review of topics that may affect proper preparation and submittal of proposals. Attendance at the pre-proposal meeting is not mandatory, but all proposers are highly encouraged to attend. Immediately following the Pre-Proposal Conference there will be a site visit.

  Location of Pre-Proposal Conference:
  Tomball Ancillary Services Building
  1110 Baker Dr.
  Tomball, TX 77375

- Friday, November 13, 2026 @ 2:00 p.m. local time – Deadline for written requests for clarifications to the RFP or Construction Documents.

- Thursday, November 12, 2026 @ 2:00 p.m. local time – Completed Microsoft Excel file in response to part VII.D.2 and VII.D.3 due. Email reference checks will be sent on this day.

- Wednesday, November 18, 2026 @ 2:00 p.m. local time – Final Addendum will be issued at this time.

- Tuesday, November 24, 2026 – Sealed Proposals due. Proposals received after the time and date set for the opening of proposals will not be accepted and will be returned unopened.

  - Part 1 Responses are due Tuesday, November 24, 2026 at 2 pm local time
  - Part 2 Responses are due Tuesday, November 24, 2026 at 3 pm local time

  Any Proposal received after such time will not be considered and will be returned unopened. Unsigned Proposals and/or Proposals received via Facsimile or Email will not be considered. Part 1 will be held unopened, and the names of Respondents withheld, by the Owner until the receipt of Part 2 responses. When Part 1 and Part 2 are received, pursuant to the

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

- Wednesday, November 25, 2026 thru Wednesday, December 2, 2026 – Evaluation of Respondent Submittals to determine the highest ranked Respondent and determine the recommendation.

- Thursday, December 3, 2026 thru Tuesday, December 8, 2026 – Anticipated recommendation to the Board of Trustees for Award of Contract, and authorization of Superintendent or designee to enter into negotiations with the highest ranked Respondent

IV. SUBMISSION FORMAT & CONTENT REQUIREMENTS

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

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

1. Part 1

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

(1) VII.A Letter of Interest
(2) VII.B Executive Summary
(3) VII.C Submission Questionnaire
(4) VII.D Respondent Project Experience
(5) VII.E Personnel
(6) VII.F Additional Information
(7) VII.G Optional Information
(8) VII.H Financial Information
(9) EXHIBIT A –PROPOSAL FORM
(10) EXHIBIT B – BID BOND
(11) EXHIBIT C - FELONY CONVICTION NOTIFICATION
(12) EXHIBIT D - ACKNOWLEDGMENT FORM - NON-COLLUSION STATEMENT

(13) EXHIBIT E – PROOF OF INSURABILITY
(14) EXHIBIT F – PROOF OF BONDING CAPACITY
(15) EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE
(16) EXHIBIT H - DEVIATION AND EXCEPTIONS FORM
(17) exhIBIT I – CERTIFICATE OF RESIDENCY
(18) EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION
(19) EXHIBIT K – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER
(20) EXHIBIT L – FORM 1295-CERTIFICATE OF INTERESTED PARTIES
(21) EXHIBIT M – CERTIFICATION REGARDING TERRORIST ORGANIZATIONS AND BOYCOTT OF ISRAEL
(22) EXHIBIT N – Certification Regarding Boycotting Certain Energy Companies
(23) EXHIBIT O – Certification Prohibiting Discrimination Against Firearm and Ammunition Industries
(24) EXHIBIT P – Certification Regarding Certain Foreign-Owned Companies in Connection with Critical Infrastructure
(25) EXHIBIT Q – ANTITRUST CERTIFICATIONS STATEMENT (TEX. GOVERNMENT CODE § 2155.005)
(26) EXHIBIT R – CONFLICT OF INTEREST DISCLOSURE STATEMENT

b) Four (4) copies of above EXCEPT that EXHIBIT A –PROPOSAL FORM and Part 2 documents are not required to be included.

c) One (1) flash drive containing:

(1) PDF of items stated in section IV.B.1.a) EXCEPT that EXHIBIT A –PROPOSAL FORM and Part 2 documents are not required to be included.
(2) Completed Microsoft Excel File in response to part VII.D.2 and VII.D.3

2. Part 2

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

(1) EXHIBIT S – BID ALTERNATES AND UNIT PRICE FORM
(2) EXHIBIT T – KEY SUBCONTRACTORS

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

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

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

1. The Owner strictly complies with all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of Respondent's information.
2. Any respondent wishing to maintain confidentiality of financial information must include a written request for same with the submission of the proposal.

V. DEFINITIONS

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

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

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

D. RFP: Request for Proposals

E. Owner: Tomball Independent School District

VI. TERM OF CONTRACT

A. A contract awarded in response to this RFP will be for General Contracting Services for Tomball HS Multi-Program Activity Center (MPAC) Facility. The Owner has defined project completion dates for the anticipated work.

VII. SUBMISSION REQUIREMENTS

A. Letter of Interest

B. Executive Summary

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

C. Submission Questionnaire

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

1. Firm Information

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

2. Firm Organization

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

D. Respondent Project Experience

1. Construction value

a) What is the construction dollar value, year by year, of all work under contract in all locations by your company for the period of 2021-2025?
b) What is the construction dollar value, year by year, of all work under contract in Texas by your company for the period of 2021-2025?
c) What is the construction dollar value, year by year, of all work under contract in Harris County and Montgomery County by your company for the period of 2021-2025?

d) What percentage of your company's total construction dollar value, year by year, does all work under contract in Harris County and Montgomery County by your company for the period of 2021-2025 represent?

e) What percentage of all work under contract in Harris County and Montgomery County by your company for the period of 2021-2025 has been K-12 school construction?

f) What is the full time equivalent (FTE) employee count in all Texas locations by your company for the period of 2021-2025?

g) What is the largest single executed contract value, year by year, by your company for the period of 2021-2025?

Section	2021	2022	2023	2024	2025
VII.D.1.a)					
VII.D.1.b)					
VII.D.1.c)					
VII.D.1.d)					
VII.D.1.e)					
VII.D.1.f)					
VII.D.1.g)					

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

a) The Owner Entity

b) Name of the Project

c) State if the project was new construction, renovation, addition or combination

d) Type of construction contract (A101, A133, Owner Unique, etc.)

e) Nature of the project/function of the building (Eg. New High School with Career Tech programs, athletic complex and natatorium)

f) Size (SF)
g) Construction delivery method (CMAR, CSP, Hard Bid, Etc.)
h) Original contract (or GMP) cost
i) Final contract (or GMP) cost
j) Number of Change Orders (if any), either cost or time, (not change proposals, contingency expenditures or similar) with brief 150-word explanation, if desired
k) Bid date/Final GMP
l) Contractual original completion date
m) Actual completion date
n) Number of claims filed by contractor with brief explanation
o) Number of RFI's
p) Name of major subcontractors
q) Owner (Primary contact) contact information (If LAN was the Program Manager, do not list LAN as the Owner's Primary Contact):

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

r) Architect contact information:

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

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

a) The Owner Entity
b) Name of the Project
c) State if the project is new construction, renovation, addition or combination
d) Type of construction contract (A101, A133, Owner Unique, etc.)
e) Nature of the project/function of the building (Eg. New High School with Career Tech programs, athletic complex and natatorium)
f) Size (SF)

g) Construction delivery method (CMAR, CSP, Hard Bid, Etc.)
h) Original contract (or GMP) cost
i) Current contract (or GMP) cost
j) Number of Change Orders (if any) through current period, either cost or time, (not change proposals, contingency expenditures or similar) with brief 150-word explanation, if desired
k) Bid date/Final GMP
l) Contractual completion date
m) Number of claims filed by contractor with brief explanation
n) Number of RFI's (To date)
o) Name of major subcontractors
p) Owner (Primary contact) contact information (If LAN was the Program Manager, do not list LAN as the Owner's Primary Contact):

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

q) Architect contact information:

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

4. Contracting and Subcontracting:

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

5. Claims, Suits and Failure to Perform: (If the answer to any of the questions below is yes, please provide details). Note: Do not fail to respond to this question or furnish vague responses. Point totals available under this category of evaluation will be affected if you choose not to fully respond.

a) Has your organization ever failed to complete any work awarded?
b) Are there any judgments, claims, arbitration proceedings or suits, pending or outstanding against your organization or its officers?

c) Has your organization filed or been involved in any lawsuits or requested arbitration with regard to construction contracts within the last sixty months?

d) Within the last sixty months, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

6. Safety

a) Provide bidder's OSHA (Occupational Safety and Health Administration) inspection logs for the last three year

b) Provide a loss analysis from the bidder's insurance carrier

c) Provide a loss history covering all lines of insurance coverage carried by the bidder

E. Personnel

1. Provide an organizational chart outlining all personnel that will be assigned to the project and their responsibilities.

2. Given the scope and schedule of the project, identify the personnel proposed, specifically the Project Manager, Job Superintendent or Superintendent(s), and Field Operations personnel proposed to work on the project. Prior to contracting, the Owner may interview the Project Manager/Job Superintendent that will be assigned to the project. Please reference these personnel to projects listed in items VII.D.2 and VII.D.3 where possible.

a) Provide a resume and references for each individual stating

(1) Proposed role on this project

(2) Description of responsibilities for this proposed role (what will this person do?)

(3) Relevant past project experience list with role that makes this individual the best choice for this project (Client, cost, seasonal construction schedule, repairs, renovations, new construction, HVAC, etc.)

(4) General background information; education, years of experience, registrations, affiliations,

(5) Years of service with your company

(6) Prior two (2) employers and years of service with each

(7) Last three (3) completed or ongoing project assignments

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

F. Additional Information

1. Letters of Recommendation: Furnish five (5) letters of recommendation from past or current K-12 Texas school district customers of the respondent, preferably from those projects listed in section VII.D.2and VII.D.3.

G. Optional Information

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

H. Financial Information

1. Attach an audited financial statement, including your organization's latest balance sheet and income statement showing the following items:

a) Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses).
b) Non-current assets (e.g., net fixed assets, other assets).
c) Current liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes).
d) Non-current liabilities (e.g., notes payable).
e) Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus, and retained earnings).
f) Name and address of firm preparing attached financial statement and date thereof.
g) Is the attached financial statement for the identical organization named under item VII.H.1 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent subsidiary).
h) Will the organization whose financial statement is attached act as guarantor of the contract for construction?
i) Provide name, address and phone number of your financial institution.

2. Bonding

a) Provide Name of bonding company and name and address of agent.
b) Provide letter from bonding company stating the currently available bonding capacity of your company (Bonding limit minus current obligations)?

VIII. AMENDMENTS TO THE RFP

A. Changes, amendments, or written responses to questions received regarding this RFP will be posted on the Owner's website. It is the Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission. No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

IX. RESTRICTIONS ON COMMUNICATION

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

B. The Owner reserves the right to contact any Respondent for clarification after responses are opened and/or to further negotiate with any Respondent if such is deemed desirable by Owner.

X. EVALUATION

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

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

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

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

Points Value	Category	Evaluation Method	Reference Section
35	Proposed Amount for Base Proposal and Owner-Selected Alternates	Respondent will receive an assigned share of the total available points in this category according to banded point categories shown in the "Table of Awarded Points". A formula will be used as follows to determine the award band for your proposal based on your percentage above the low bid: Percentage Above Low Bid=((Your combination of base price proposal and Owner-selected Alternates minus the minimum proposed combination of base price proposals and Owner-selected Alternates)/(minimum proposed combination of base price proposals and Owner-selected Alternates)). The result of the formula will be used to proportion the points awarded based on the "Table of Awarded Points"	XIII
10	Evaluation Survey of Company References and Project Contacts	Respondent's references and stated project contacts will be sent a request to participate in a survey of your company. The weighted average overall score for your company will be used to allocate a pro-rated share of the total available points in this category. If 4 or fewer responses are received, your company will earn fractional points for this category. You are responsible for accuracy of email address. A formula will be used as follows: ("Reference Factor" * points available in the category). "Reference Factor" is determined as follows: If 4 or fewer responses =((Your Firm Average Score - Min of all Firms) / (Max of all Firms - Min of all Firms)) * (number of responses * 20%) OR If 5 or more responses = (Your Firm Average Score - Min of all Firms) / (Max of all Firms - Min of all Firms). A minimum value not less than 20% of the available points will be awarded as a floor value. Note: by default, under the scoring above, one firm will earn all points and one firm will earn the points floor.	VII.D.2, VII.D.3
15	History of Company Performance	Respondent demonstrates consistent and average past and current workload to staff ratio, showing ability to adequately staff the work and company stability. Respondent shows no or little past history of claims, suits and failure to perform. Respondent shows low number of RFI Generated per project. Respondent shows ability to maintain cost with no cost increases. Positive safety record. Positive asset to liability ratio. Adequate bonding capacity. Strength of letters of reference.	VII.D.1, VII.D.2.n), VII.D.3.m), VII.D.5, VII.D.2.o), VII.D.3.n), VII.D.2.h), VII.D.2.i), VII.D.2.j), VII.D.3.h), VII.D.3.i), VII.D.6, VII.H.1, VII.H.2, VII.F.1
15	Similar Company Project Experience and Qualifications	Respondent company demonstrates similar company project experience by showing high proportion of Harris County and Montgomery County region work, projects of comparable cost, complexity and timeframe to the work in the RFP. Respondent demonstrates high proportion of past experience with subcontractors named in proposal.	VII.D.1, VII.D.2, VII.D.2.p), VII.D.3.o), VII.D.3, VII.D.4, XXXII

20	Similar Individual Personnel Project Experience and Qualifications	Respondent individual personnel proposed for the work in the RFP demonstrate similar project experience by showing high proportion of Harris County and Montgomery County region work, projects of comparable cost, complexity and timeframe to the work in the RFP. Organizational approach to the project is clear.	VII.E.2.a), VII.E.1
5	Prior Positive Experience with Owner	Respondent will earn 2.5 points if no prior experience with Owner. Respondent will earn increased points for positive prior experience. Respondent will earn reduced points for negative prior experience	

Table of Awarded Points

The lowest price receives the maximum points, with others receiving points based on a percentage comparison with the lowest cost proposed.

XI. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

A. The Form of Contract will be AIA Document A101 - 2017, attached in Section XXXV, including incorporated reference files.

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

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

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

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

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

G. Appeal/Protest Process. Any respondent who submitted a proposal may appeal the Owner's award, if the appeal is based on deviations from laws, rules, regulations, or Owner policies. Owner Board Policy GF(Local) applies to any respondent wishing to appeal a proposal and/or award of a contract. In the event respondent is unsure about the award of

the contract, it is the Proposer's responsibility to contact the Owner on the next business day after the award is announced and verify details concerning the award.

XII. PROPOSAL MODIFICATIONS AND WITHDRAWAL PRIOR TO PROPOSAL OPENING

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

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

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

XIII. EXHIBIT A –PROPOSAL FORM

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

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

1. **Contract Time:** The undersigned agrees that, if the proposal is accepted, the Date of Commencement shall be established in a "Notice to Proceed" from the Owner and to obtain Substantial Completion of all work not later than May 5, 2028, subject to extensions of time as described in the Contract Documents.

2. **Construction Permit:** The undersigned acknowledges that the bid or proposal has been submitted with the understanding that the time from submission of the bid, or proposal until a building permit will be released is estimated as **90 calendar days**. The owner may issue a notice to proceed prior to the date when a building permit is released and the contractor shall commence all activities on the project for which a building permit is not required, such as project submittals, site mobilization, subcontractor buyout, and similar activities.

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

Addenda 1 .....dated ..... _ _/_ _/_ _ _ _

Addenda 2 .....dated ..... _ _/_ _/_ _ _ _

Addenda 3 .....dated ..... _ _/_ _/_ _ _ _

Addenda 4 .....dated ..... _ _/_ _/_ _ _ _

Addenda 5 .....dated ..... _ _/_ _/_ _ _ _

4. **Base Proposal:** The undersigned agrees to perform the complete Work of this Project, for the lump sum price of (The Base Proposal includes all allowances listed in Section 01 21 00):

_____Dollars

(Amount written in words governs)

$_____(Amount in figures)

Submit with Part 1 **Company Name:**_____

Company:_____

Address:_____

City ST Zip

Telephone:_____ Fax:_____ Email:_____

Printed Name/Title:_____ Signature:_____

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

Submit with Part 1

XIV. EXHIBIT B – BID BOND

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

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

Furnish Bid Bond.

Submit with Part 1

BID BOND

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

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

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

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

(SEAL)

_____

(SEAL)

Attest: By: _____

Affix

Corporate

Seal

Submit with Part 1

Attest: By: _____

Affix

Corporate

Seal

Attest: By: _____

Countersigned

By _____

* Attorney-in-Fact, State of _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

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

Corporate

Seal

Title: _____

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

Submit with Part 1

XV. EXHIBIT C - FELONY CONVICTION NOTIFICATION

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

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

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

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

Vendor's Name_____

Authorized Company Official's Name (Printed)_____

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

_____

Submit with Part 1

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

_____

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

Name of Felon(s)_____

Details of Conviction(s)_____

Signature of Company Official_____

Submit with Part 1

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

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

Vendor:_____

Address: _____

Phone: _____

Respondent (Signature):_____

Respondent (Print Name):_____

Position with Company:_____

Signature of CompanyOfficial_____

Authorizing Submission:_____

Company Official (Print Name):_____

Official Position: _____

Submit with Part 1

XVII. EXHIBIT E – PROOF OF INSURABILITY

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

Submit with Part 1

XVIII. EXHIBIT F – PROOF OF BONDING CAPACITY

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

Submit with Part 1

XIX. EXHIBIT G - SIGNATURE PAGE AND DECLARATION OF COMPLIANCE

Circle below to indicate the business structure of Respondent

Individual/Sole Proprietorship — Partnership or Joint Venture

Corporation — Other Entity (State Type)

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

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

Respondent Organization Name_____

By: _____

Printed Name: _____

Title: _____

By: _____

Submit with Part 1

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

Printed Name: _____

Title: _____

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

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

Submit with Part 1

XX. EXHIBIT H - DEVIATION AND EXCEPTIONS FORM

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

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

Note that this deviation and exceptions form is NOT intended to note any deviations from the Construction Documents or Specifications and other information contained within the Project Manual. Any questions regarding those must be submitted in writing, per the terms of this RFP, and will be addressed accordingly in an Addenda.

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

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

Respondent Organization Name_____

Authorized Signature_____

Submit with Part 1

XXI. EXHIBIT I – CERTIFICATE OF RESIDENCY

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

"Section: 2252.001
(3) 'Non-resident bidder' refers to a person who is not a resident.
(4) 'Resident bidder' refers to a person whose principal place of business in this state, including a

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

Section 2252.002

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

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

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

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

_____Resident Bidder _____Non-resident Bidder

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

_____ in the state of _____

_____
Signature of authorized Company Representative

_____
Print Name

_____ ___/___/___
Title Date

Submit with Part 1

XXII. EXHIBIT J - VENDOR STATEMENT OF DEBARMENT/SUSPENSION

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

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

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

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER_____ FAX NUMBER DATE _____

Submit with Part 1

XXIII. EXHIBIT K – REQUEST FOR TAXPAYER IDENTIFICATION NUMBER

Complete and submit Internal Revenue Service for "W-9"

Submit with Part 1

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

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

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

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

(1) ***"Business Entity"*** means an entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation. TEX. GOV'T CODE § 2252.908(1).

(2) ***"Interested Party"*** means a person:
   a) who has a controlling interest in a business entity with whom Owner contracts; or
   b) who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity. TEX. GOV'T CODE § 2252.908(3).

(3) ***"Controlling interest"*** means:
   a) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent;
   b) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or
   c) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers. *Subsection (c) does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.* TEX. ETHICS COMM. RULE 46.3(c).

(4) ***"Intermediary"*** means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:
   a) receives compensation from the business entity for the person's participation;
   b) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and
   c) is not an employee of the business entity. TEX. ETHICS COMM. RULE 46.3(e).

As a "business entity," all vendors must:

(1) **complete Form 1295 electronically** with the Texas Ethics Commission using the online filing application, which can be found at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
- **All vendors must complete Form 1295, even if no interested parties exist**
- In Section 2, insert "Tomball ISD"
- In Section 3, insert the "RFQ-CSP #1004 – 26" for this proposal

(2) **print a copy of the completed form** (make sure that it has a computer-generated certification number in the "Office Use Only" box)

(3) have an authorized agent of the business entity **sign the form**

(4) **submit** the completed Form 1295 by **attaching the form to your proposal.**

Submit with Part 1

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

Submit with Part 1

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

Respondent hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. (Tex. Gov't Code §§ 2252.151-.154)

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

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER_____ DATE _____

Submit with Part 1

XXVI. EXHIBIT N – CERTIFICATION REGARDING BOYCOTTING CERTAIN ENERGY COMPANIES

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

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER_____ DATE _____

Submit with Part 1

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

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

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepare By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER_____ DATE _____

Submit with Part 1

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

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

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

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepared By: _____

Company Official's Name: _____

Submit with Part 1

Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER_____ DATE _____

Submit with Part 1

XXIX. EXHIBIT Q – ANTITRUST CERTIFICATIONS STATEMENT (TEX. GOVERNMENT CODE § 2155.005)

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

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

Name of Company/Firm: _____

Mailing Address: _____

City/State/Zip: _____

Email Address: _____

Prepared By: _____

Company Official's Name: _____
Printed

Company Official's Authorized Signature: _____

TITLE _____

TELEPHONE NUMBER_____ DATE _____

Submit with Part 1

XXX. EXHIBIT R – CONFLICT OF INTEREST DISCLOSURE STATEMENT

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

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

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

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

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

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

Owner Board of Trustees include:
Mr. Mark Lewandowski, Mr. John McStravick, Dr. Michael Pratt, Mrs. Amanda Bass, Mrs. Jennifer Kratky, Mr. Coco White, Mr. Patrick Beecher

Owner Superintendent: Dr. Martha Salazar-Zamora

Current local government officers include, but are not limited to:
Dr. Amy Schindewolf, Dr. Michael Webb, Dr. Steven Gutierrez, Mrs. Holly Sherman, Mr. Zack Boles

If no conflict of interest exists, you must fill out Box 1 and type N/A on Box 3 of the CIQ form, sign and date it.
In the event of changed circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware that a conflict of interest exists.

Submit with Part 1

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

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

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

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

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

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

***

(2) the vendor:

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

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

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

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

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

(3) has a family relationship with a local government officer of that local governmental entity.

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

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

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

XXXI. EXHIBIT S – BID ALTERNATES AND UNIT PRICE FORM

Alternates: If the Owner elects to accept any or all of the Alternates, the undersigned agrees to modify the Base Proposal as stipulated. **Circle Add or Deduct** for each Alternate below.

Alternate NO. 1: Section 23 64 27 - Rotary-Screw Water Chillers - Owner will select one alternate from Alternates 1A – 1C to be included with the Base Proposal. **Do not** include Rotary-Screw Water Chillers in the Base Proposal.

Alternate NO. 1A: Provide Rotary-Screw Water Chillers as manufactured by **Carrier Corporation** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 1B: Provide Rotary-Screw Water Chillers as manufactured by **Trane Technologies, PLC** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 1C: Provide Rotary-Screw Water Chillers as manufactured by **JCI/York** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 2: Section 23 73 13.19 – Modular Central-Station Air-Handling Units - Owner will select one alternate from Alternates 2A – 2C to be included with the Base Proposal. **Do not** include Modular Central Station Air-Handling Units in the Base Proposal.

Alternate NO. 2A: Provide Custom Indoor Central-Station Air-Handling Units as manufactured by **Carrier Corporation** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 2B: Provide Custom Indoor Central-Station Air-Handling Units as manufactured by **Climate Craft and provided by Hunton Trane** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 2C: Provide Custom Indoor Central-Station Air-Handling Units as manufactured by **JCI/York** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 3: Section 23 74 13.16 – Packaged, Outdoor, Central-Station Air-Handling Units - Owner will select one alternate from Alternates 3A – 3C to be included with the Base Proposal. **Do not** include Packaged, Outdoor, Central-Station Air-Handling Units in the Base Proposal.

Alternate NO. 3A: Provide Packaged, Outdoor, Central-Station Air-Handling Units as manufactured by **Carrier Corporation** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 3B: Provide Packaged, Outdoor, Central-Station Air-Handling Units as manufactured by **Trane / Valent**, PLC as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 3C: Provide Packaged, Outdoor, Central-Station Air-Handling Units as manufactured by **JCI/York** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 4: Section 23 09 23 – Direct-Digital Controls - Owner will select one alternate from Alternates 4A – 4B to be included with the Base Proposal. **Do not** include Direct-Digital Control Devices for HVAC in the Base Proposal.

Alternate NO. 4A: Provide Direct-Digital Control Devices for HVAC as manufactured by **Automated Logic** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 4B: Provide Direct-Digital Control Devices for HVAC as manufactured by **Unify Energy Solutions** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 5: Section 23 52 16 – Condensing Boilers & 21 51 00 Breechings, Chimneys, and Stacks - Owner will select one alternate from Alternates 5A – 5 B to be included with the Base Proposal. **Do not** include Condensing Boilers and Breechings, Chimneys and Stacks in the Base Proposal.

Alternate NO. 5B: Provide Condensing Boilers as manufactured by **Hydrotherm – KN Series** and Breechings, Chimneys, and Stacks all from Goes Heating as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 5A: Provide Condensing Boilers as manufactured by **Camus - Avenger** and Breechings, Chimneys, and Stacks all from Delta T Equipment as specified and as shown on the drawings.

Add/Deduct_____Dollars
(Amount written in words governs)
$_____(Amount in figures)

Alternate NO. 6: Section 23 82 19.13 – Fan Coil Units - Owner will select one alternate from Alternates 6A – 6C to be included with the Base Proposal. **Do not** include Fan Coil Units in the Base Proposal.

Alternate NO. 6A: Provide Fan Coil Units as manufactured by **Carrier Corporation** specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 6B: Provide Fan Coil Units as manufactured by **Trane** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 6C: Provide Fan Coil Units as manufactured by **JCI / York** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 7: Section 23 81 26 – Ductless Mini-Split-System Air-Conditioners - Owner will select one alternate from Alternates 7A – 7B to be included with the Base Proposal. **Do not** include Fan Coil Units in the Base Proposal.

Alternate NO. 7A: Provide Ductless Mini-Split-System Air-Conditioners as manufactured by **Carrier Corporation** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 7B: Provide Ductless Mini-Split-System Air-Conditioners as manufactured by **Mitsubishi provided by Hunton Trane** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 8: Section 23 05 14 Variable Frequency Drives - Owner will select one alternate from Alternates 8A – 8C to be included with the Base Proposal. **Do not** include Fan Coil Units in the Base Proposal.

Alternate NO. 8A: Provide Variable Frequency Drives as manufactured by **ABB** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 8B: Provide Variable Frequency Drives as manufactured by **Danfoss** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 8C: Provide Variable Frequency Drives as manufactured by **Toshiba** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 9: Section 23 21 23 Hydronic Pumps - Owner will select one alternate from Alternates 9A – 9D to be included with the Base Proposal. **Do not** include Fan Coil Units in the Base Proposal.

Alternate NO. 9A: Provide Hydronic Pumps as manufactured by **Bell & Gossett** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 9B: Provide Hydronic Pumps as manufactured by **Pentair / Aurora** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 9C: Provide Hydronic Pumps as manufactured by **Armstrong** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 9D: Provide Hydronic Pumps as manufactured by **Taco** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 10: Section 26 50 00 Light Fixture Package - Owner will select one alternate from Alternates 10A – 10C to be included with the Base Proposal. **Do not** include Light Fixture Package in the Base Proposal. This alternate shall include batteries, drivers, generator transfer devices, fixture accessories, exit signs, parking poles / heads, wall packs, decorative supports or mountings as well as any wiring required to connect light fixtures to remote battery or driver. Alternate pricing shall also include any attic stock of fixtures or drivers listed in the project. This alternate shall not include the sports field lighting.

Alternate NO. 10A: Provide Light Fixture Package from **CW Lighting** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 10B: Provide Light Fixture Package from **Lesco** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 10C: Provide Light Fixture Package from **PSA** as specified and as shown on the drawings.
Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 11: Section 26 09 43 Digital Lighting Controls - Owner will select one alternate from Alternates 11A – 11C to be included with the Base Proposal. **Do not** include Digital Lighting Controls in the Base Proposal. This alternate shall include non-networked digital lighting system as detailed on plans and specifications. The alternate pricing shall include any wall switches, power packs, occupancy sensors, daylight harvesting sensors, handheld devices, relays, wiring and any accessors associated with a complete lighting control system. Alternate pricing shall include any attic stock listing in the project.

Alternate NO. 11A: Provide Digital Lighting Controls manufactured by **Dynalite** as specified and as shown on the drawings.

Add/Deduct _____Dollars

(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 11B: Provide Digital Lighting Controls manufactured by **Acuity** as specified and as shown on the drawings.

Add/Deduct _____Dollars

(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 11C: Provide Digital Lighting Controls manufactured by **Cooper Lighting Solutions** as specified and as shown on the drawings.

Add/Deduct _____Dollars

(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 12: Section 32 18 23.30 – Infilled Monofilament Synthetic Turf System - Owner will select one alternate from Alternates 12A – 12D to be included with the Base Proposal. **Do not** include Infilled Monofilament Synthetic Turf System for field turf in the Base Proposal.

Alternate NO. 12A: Provide Infilled Monofilament Synthetic Turf for the field turf as manufactured by **Hellas** as specified and as shown on the drawings.

Add/Deduct _____Dollars

(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 12B: Provide Infilled Monofilament Synthetic Turf for the field turf as manufactured by **AstroTurf** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 12C: Provide Infilled Monofilament Synthetic Turf for the field turf as manufactured by **FieldTurf** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 12D: Provide Infilled Monofilament Synthetic Turf for the field turf as manufactured by **Paragon** as specified and as shown on the drawings.

Add/Deduct _____Dollars
(Amount written in words governs)

$_____(Amount in figures)

Alternate NO. 13: Provide optional adjustment to Base Proposal.

Add/Deduct _____Dollars

(Amount written in words governs)

$_____(Amount in figures)

Unit Price: The undersigned further agrees that in case adjustments to the work or material is authorized from what is shown in the Contract the following unit prices will be used in adjusting the Contract Price. The Contract Price shall be subject to increase or decrease based upon the actually accepted quantities performed multiplied by the current contract unit prices. Work shall be in conformance with the Contract Documents. If unit price shall be used, then payment for all items will be on a unit price basis, unless listed otherwise in the Proposal Form. The unit price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all Work required for each of the unit price items. Contract unit price multiplied by agreed quantity is full compensation and includes Overhead, field overhead, and profit.

Unit Price 1: ELECTRICAL DUPLEX RECEPTACLE

Provide unit price for a new 20A, 120V duplex electrical receptacle and cover plate, flush mounted in a CMU, metal stud, or demountable wall construction, circuited to an existing electrical panel within 150 feet of the outlet using a branch circuit consisting of 2 #10 AWG and 1 #10 AWG ground in ¾ inch EMT conduit. All conduits to be concealed in wall construction. Unit price shall include a 20 amp circuit breaker to be installed in existing panel space.

$_____each

UNIT PRICE 2: DATA DROP

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

$_____ each

UNIT PRICE 3: VOICE DROP

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

$_____ each

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

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

$_____ each

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

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

$_____ each

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

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

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

UNIT PRICE 7: EXIT SIGN

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

$_____ each

UNIT PRICE 8: SECURITY FILM

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

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

Unit Price NO. 9: Concrete Poured from Truck

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

$_____ Cubic yard

Unit Price NO. 10: Concrete Pumped

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

$_____ Cubic yard

Unit Price NO. 11: 24" Diameter Auger Cast Grout Piles

Each linear foot of 24" diameter auger cast grout piles complete including grout, accessories, & drilling.

$_____ Linear Foot

Unit Price NO. 12: Concrete Masonry Units

Each unit of concrete masonry units, as required by construction documents.

$_____ Units

Unit Price NO. 13: Reinforcing Steel, Straight or Bent

Pound weight of reinforcing steel, straight or bent, as required by the Contract Documents.

$_____ Pound

Unit Price NO. 14: Structural Steel

Pound weight of structural steel as required by the Contract Documents.

$_____ Ea.

Company:_____

Address:_____

City ST Zip

Telephone:_____ Fax:_____ Email:_____

Printed Name/Title:_____ Signature:_____

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

Submit with Part 2

Company Name:_____

XXXII. EXHIBIT T – KEY SUBCONTRACTORS

List the following top (3) Subcontractors for each discipline listed below providing their all-inclusive price to allow for a net add or deduct for the Owner's review. The number one sub-contractor shall be the one used within the base bid. Number two shall be the 2nd bidder and so on. The Owner reserves the right to select either of the three (3) or discards all to seek another Subcontractor or Vendor Bid.

Ranked Discipline		**Name of Company**	**Cost**
Concrete			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
PEMB – Provide lead time for manufacturing			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
Mechanical			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
Plumbing			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
Electrical			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
Fire Alarm			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
Building Automation			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____
Self-Performed Work			
List All Self-Performed Work. Provide Pricing for Subcontractors for the same Work Scope.			
	#1	_____	$ _____
	#2	_____	$ _____
	#3	_____	$ _____

Submit with Part 2

XXXIII. EXHIBIT U – PREVAILING WAGE RATES

Prevailing Wage Rate Determination Information

The following information is from Chapter 2258 Texas Government Code:

Sec. 2258.021. Right to be Paid Prevailing Wage Rates.

(a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
  (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
  (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
(b) Subsection (a) does not apply to maintenance work.
(c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

Sec. 2258.023. Prevailing Wage Rates to be paid by Contractor and Subcontractor; Penalty.

(a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
(b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
(c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
(e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

Sec. 2258.051. Duty of Public Body to Hear Complaints and Withhold Payment.

A public body awarding a contract, and an agent or officer of the public body, shall:

(1) take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and
(2) withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without a determination by the public body that there is good cause to believe that the contractor has violated this chapter.

1 of 3

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Prevailing Wage Rates – School Construction Trades

June 2, 2025

Texas Gulf Coast Area

CLASSIFICATION	2025 HOURLY RATE
ASBESTOS WORKER	$27.20
BRICKLAYER; MASON	$24.90
CARPENTER; CASEWORKER	$23.13
CARPET LAYER; FLOOR INSTALLER	$26.20
CONCRETE FINISHER	$23.83
DATA COMM/TELE COMM	$24.33
DRYWALL INSTALLER; CEILING INSTALLER	$24.33
ELECTRICIAN	$29.86
ELEVATOR MECHANIC	$39.78
FIREPROOFING INSTALLER	$22.99
GLAZIER	$23.25
HEAVY EQUIPMENT OPERATOR	$22.17
INSULATOR	$21.95
IRONWORKER	$26.50
LABORER, HELPER	$19.81
LATHERER; PLASTERER	$22.75
LIGHT EQUIPMENT OPERATOR	$28.75
METAL BUILDING ASSEMBLER	$24.00
PAINTER; WALL COVERING INSTALLER	$20.17
PIPEFITTER	$29.82
PLUMBER	$27.98
ROOFER	$22.50
SHEET METAL WORKER	$29.96
SPRINKLER FITTER	$23.00
STEEL ERECTOR	$26.00
TERRAZZO WORKER	$22.75
TILE SETTER	$22.00
WATERPROOFER; CAULKER	$24.00

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

2 of 3

Submit with Part 2

Prevailing Wage Rates
Worker Classification Definition Sheet

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

END OF DOCUMENT

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

XXXIV. EXHIBIT V – AIA DOCUMENT A101-2017, AND EXHIBITS

DRAFT

AIA® Document A101™ – 2017

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a Stipulated Sum

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

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

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

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

«XXXX.»« »
«XXXX »
«XXXXX »

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

«Tomball ISD »
«Tomball High School Multi-Program Activity Center »
«30330 Quinn Rd.
Tomball, Texas 77375»

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

« PBK Architects »« »
«11 Greenway Plaza 22nd Floor»
« Houston, Texas 77046 »
« »

The Owner and Contractor agree as follows.

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

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

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

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TABLE OF ARTICLES

1 THE CONTRACT DOCUMENTS

2 THE WORK OF THIS CONTRACT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 TERMINATION OR SUSPENSION

8 MISCELLANEOUS PROVISIONS

9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and written Modifications signed by both parties that are issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. As used in the Contract Documents, the terms "AIA Document A201– 2017", "General Conditions", "General Conditions of the Contract for Construction" or "A201-2017" shall refer to the General Conditions document that pertains to the Project, as modified or amended by the Owner for the project. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

Established as follows:

« The date of commencement shall be the latter of either day that the Contractor receives a Notice to Proceed from the Owner or the first business day following the receipt of the Building Permit for those portions of the project that require a Building Permit. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner. »

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

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

§ 3.3 Substantial Completion

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§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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

[«X»] By the following date: «**May 5, 2028**»

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

Portion of Work	Substantial Completion Date
« »	

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

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

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

Item	Price

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

Item	Price	Conditions for Acceptance
« »		

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

Item	Price
«Owner's Contingency »	

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

Item	Units and Limitations	Price per Unit ($0.00)
«N/A »		

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

« For Liquidated Damages, refer to AIA Document A201-2017, as modified by the Owner for the project. »

§ 4.6 Other:

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

« »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

« For Applications for Payment and Progress Payments, refer to AIA Document A201-2017, as modified by the Owner for the project. »

§ 5.1.3 Intentionally Deleted.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. Refer to Article 9 Payments and Completion in AIA Document A201-2017, as modified for the Owner for the project, for more information

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

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

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

- **.1** That portion of the Contract Sum properly allocable to completed Work;
- **.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing and per the conditions noted in AIA Document A201-2017 Section 9; and
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- **.1** The aggregate of any amounts previously paid by the Owner;
- **.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017, as modified by the Owner for the project;
- **.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- **.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 as modified by the Owner for the project; and
- **.5** Retainage withheld pursuant to Section 5.1.7.

§ 5.1.6.3 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- **.1** If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts, and fees due Contractor at any time.
- **.2** If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any final payment to Contractor shall be subject to deduction for such amounts as the Architect and Owner, if

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applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

§ 5.1.6.4 The Application for Payment shall include all attachments and checklists, as identified in Section 9.3 of AIA Document A201-2017, as modified by the Owner for this project.

§ 5.1.7 Retainage

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

«Five percent (5%) »

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

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« No reduction of retainage shall occur until Final Completion and final payment. »

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

« As identified in AIA Document A201-2017, as modified by the Owner for this project.»

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

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

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

.1 the Contractor has fully performed the Contract including final submission of all close-out documents including as-built documents as provided in AIA Document A201–2017, as modified by the Owner for the project, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 Contractor has submitted a final Application for Payment

.3 a final Certificate for Payment has been issued by the Architect, and

.4 the waiver forms for final payment are included with the application.

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.5 Other requirements per AIA Document A201-2017, as modified by the Owner for this project.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment, except as otherwise provided in the Contract Documents.

« Refer to AIA Document A201-2017, as modified by the Owner for this project. »

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« As set forth in Chapter 2251 of the Texas Government Code »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

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

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

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

[« »] Other – Voluntary Mediation per Section 15.3 of AIA Document A201-2017, as modified by the Owner for this project. If not resolved by mediation as set forth in Section 15.3, it shall be resolved by litigation in a court of competent jurisdiction per AIA Document A201-2017, as modified by the Owner. « »

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

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

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

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

§ 8.3 The Owner's authorized representative:

Mitchell Lee »
Executive Director of Facilities & Maintenance »
310 S. Cherry St
Tomball, Texas 77375

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

XXXX»
XXXXX »
XXXXX »
XXXXXX

§ 8.4 The Contractor's representative shall not be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, AIA Document A201 Article 11, as amended by the Owner for this project, and elsewhere in the Contract Documents.

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§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« Use of AIA Document E203-2013 is not required.»

§ 8.7 Other provisions:

« »

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

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

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

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

§ 8.7.5 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any part hereto regardless of who is responsible for its preparation.

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

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

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

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

§ 8.7.10 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is certifying to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Contractor is also representing that it will require all subcontractors to provide workers' compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to the Contractor. The Contractor will provide the certifications to Owner. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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

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

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

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

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

§ 8.8 Governing Law and Venue

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

§ 8.8.2 Venue

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of Harris County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Harris County, Texas.

§ 8.9 Severability

If any provision or part of the Contract Documents is held to be illegal, invalid, or unenforceable under any present or future law or regulation, such provision shall be fully severable and the Contract Documents shall be construed

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and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents. The remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds

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

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

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

« Use of AIA Document E203-2013 is not required. »

.5 Drawings

Number	Title	Date
«1 »		

.6 Specifications

Section	Title	Date	Pages
« »			

.7 Addenda, if any:

Number	Date	Pages
« »		

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

.8 Other Exhibits:

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

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

« Use of AIA Document E204-2017 is not required. »

[« »] The Sustainability Plan:

Title	Date	Pages
« »		

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

Document	Title	Date	Pages
« »			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or

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proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

.1 Owner's competitive procurement solicitation documents and Contractor's responses and proposals to same.

.2 The Project Manual for the Project, including all sections to same, whether issued or created prior to or after the execution of this Agreement.

.3 Statutory Payment and Performance Bonds.

.4 Certificates of Insurance required of the Contractor.

.5 All documents listed or described in Section 1.1.1 of AIA Document A201-2017, as amended by the Owner.

.6 Scale/Schedule of Prevailing Wages (attached as Exhibit "1" to the AIA Document A201–2017, General Conditions of the Contract for Construction, as modified by the Owner for the project) and incorporated herein as if fully set forth.

.7 Any modifications to this Agreement or to the Contract or any Contract Documents approved by the Parties.

.8 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract

.9 Project Management Software (attached as Exhibit "C" to the AIA Document A201–2017, General Conditions of the Contract for Construction, as modified by the Owner for the project) and incorporated herein as if fully set forth.

.10 Exhibit "D" - Hellas Construction, Inc. Project Bid Proposal dated and received on 03/27/2026.

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

« »	« »
OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
« » « »	«Name » « Title »
(Printed name and title)	*(Printed name and title)*
(Date)	*(Date)*

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XXXV. EXHIBIT W - AIA DOCUMENT A201-2017

DRAFT

AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

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

«Tomball ISD »
«Tomball High School Multi-Program Activity Center »
«30330 Quinn Rd.
Tomball, Texas 77375»

THE OWNER:
(Name, legal status and address)

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

THE ARCHITECT:
(Name, legal status and address)

« PBK Architects »« »
«11 Greenway Plaza, 22nd Floor »
« Houston, Texas 77046 »
« »

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

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7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

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

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

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

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12 UNCOVERING AND CORRECTION OF WORK

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Performance Bond, Labor and Material Payment Bond, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect or the Owner. All sections of the Project Manual shall be a part of the Contract Documents.

Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to propose, instructions to Proposers, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, or the Contractor's Proposal.

To the extent any provision in the Supplementary Conditions to these AIA Document A201-2017 General Conditions, issued by Owner, if any, conflicts with any provision in the Supplementary Conditions issued by the Architect; the Supplementary Conditions to these AIA Document A201-2017 General Conditions issued by Owner shall control.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction and are as fully a part of the Contract as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the original Contract Documents, the Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. The Agreement shall include all documents included in the bid and request for qualifications phase. For the General Contractor it shall include the Request for Proposal in its entirety as it relates to the work. For the Consultant it shall include the RFQ/IDIQ in its entirety as it relates to the work.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. It also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their

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respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

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

§ 1.1.9 Agreement Between Owner And Architect
The term "agreement between Owner and Architect" means the agreement for professional services for this Project between the Owner and Architect.

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

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

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with the Owner's interpretation.

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

§ 1.2.1.2 Precedence of the Contract Documents: The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

1. Contract Modifications (such as Change Orders) signed by the Contractor and Owner.
2. The Agreement. (AIA Document A101-2017)
3. The General Conditions of the Contract for Construction
4. Addenda, with those of later date having precedence over those of earlier date
5. Drawings and Specifications

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

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

§ 1.2.4 Intent of Drawings
§ 1.2.4.1 Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or

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fixtures or equipment may affect any particular installation. These shall be ascertained by the Contractor from the Architect and correlated to bring the parts together to a complete whole.

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

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

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

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

§ 1.2.5 Diagrammatic indications of piping, ducts, conduit, and other similar items are subject to adjustment to obtain required grading, passage over, under or around obstructions, to avoid exposure to finished areas, or unsightly, obstructing conditions. Contractor shall be responsible for coordination of these adjustments and recommending alternate solutions whenever design details affect construction feasibility, costs, or schedules.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights, subject to any rights and/or licenses to or in the Instruments of Service granted to the Owner by the terms and provisions of the agreement between Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. The Owner holds perpetual right to use all of the instruments of service for this project.

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

§ 1.6 Notice

§ 1.6.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer at the corporation for which is was intended, or if delivered at or sent by certified mail, or by registered or certified mail, or by courier service providing proof of delivery, to the last business address known to the party giving notice, or if delivered by facsimile or other electronic communications to the offices of the person or corporation for which it was intended. For facsimiles or other electronic communications received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

§ 1.6.2 Paragraph Deleted.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data, if needed.

§ 1.8 Building Information Models Use and Reliance

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

§ 1.9 MISCELLANEOUS OTHER DEFINITIONS

§ 1.9.1 ADDENDA, ADDENDUM

Documents issued by the Architect prior to execution of the Owner Contractor Agreement for this Project that modify or clarify the Proposal Documents. All addenda become a part of the Contract Documents.

§ 1.9.2 ALTERNATE PROPOSAL(S)

A separate amount stated on a separate Proposal Form which, if accepted by the Owner, will be added to or deducted from the Base Proposal. If accepted, the work that corresponds to the alternate proposal will become part of the agreement between Owner and Contractor. Alternate proposals shall remain valid for the same period of time as the Base Proposal after receipt of proposals, regardless if an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

§ 1.9.3 APPROVED, APPROVED EQUIVALENT, APPROVED EQUAL, OR EQUAL

The terms Approved, Approved Equivalent, Approved Equal, and Or Equal, relate to the substitution of products or systems approved in writing by the Architect. Refer to Paragraph 3.4.2, Substitution of Products and Systems, for procedures which must be followed after award of contract. The substitution procedure process to be followed prior to receipt of proposals is described in the Instructions to Bidders.

§ 1.9.4 BASE PROPOSAL

The Contractor's proposal for the Work, not including any Alternates.

§ 1.9.5 CONTRACT TIME

The period of time including all Anticipated Weather Days which is established in the Contract Documents for Substantial Completion of the Work. This period of time is subject to authorized adjustments for Adverse Weather Days and other Calendar Day extensions of time as permitted by and enumerated in the Contract Documents.

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§ 1.9.6 DATE OF AGREEMENT
The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted in the first page of the Agreement between Owner and Contractor and shall be referenced in Performance Bond and Payment Bond forms. See also Date of Commencement of Work.

§ 1.9.7 DATE OF COMMENCEMENT OF THE WORK
The date of a written Notice to Proceed to the Contractor for a given portion of the Work. This date constitutes day zero (0) of the stated Contract Time. The Notice to Proceed will be issued after the District has received and validated the Contractor's Payment Bond, Performance Bond and Insurance.

§ 1.9.8 DATE OF FINAL COMPLETION
The end of construction. See AIA Document A201, Section 9.10.

§ 1.9.9 DAY
The following days are referenced in the documents:

.1 Calendar Days: The days of the Gregorian calendar. The Contract Time is established in Calendar Days and extensions of time granted for Regular Work Days lost, if any, will be converted to Calendar Days.
.2 Holidays: The days officially recognized by the construction industry in this area as a holiday; limited to the observance days of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day.
.3 Regular Work Days: All calendar days except holidays, Saturdays, and Sundays. Requests for extensions of time shall be requested on the basis of Regular Work Days, and those days, if approved; will be converted to Calendar Days by multiplying Regular Work Days by a factor of one and three-tenths.
.4 Anticipated Adverse Weather Days: An allowance of Regular Work Days established as probable days lost due to weather delays; said allowance to be included in the Contractor's Completion Time.
.5 Adverse Weather Days: Regular Work Days when rain, flooding, snow, unusually high winds, excessively wet grounds, or similar circumstances prevent progress on Critical Path portions of the Work. The Contractor will be entitled to an extension of the Contract Time for the net additional time, if any, which results from deducting the amount of Anticipated Adverse Weather Days from the total amount of approved Adverse Weather Days as allowed or further defined within the Agreement..
.6 Net Weather Days: The difference in working days between Anticipated Adverse Weather Days and Adverse Weather Days.

ARTICLE 2 OWNER

§ 2.1 General

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

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

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§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

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

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 If requested in writing to do so by the Contractor prior to the start of the work, the Owner may, at the Owner's sole discretion, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTEE~~Y~~ TO CONTRACTOR OR TO ANY OTHER PERSON, THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTEE~~Y~~ THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and the agreement by Owner to furnish such other information or services, provided that Owner shall not be required to expend any funds to obtain such information unless Owner agrees to do so.

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

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§ 2.4 Owner's Right to Stop the Work

If the Contractor, after written notice and opportunity to cure, but in no event longer than ten (10) days, fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may, at the Owner's discretion, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the actual cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Owner. Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days of receipt of written notice from the Owner therefor.

§ 2.6 OWNER'S LACK OF LIABILITY TO THIRD PARTY

§ 2.6.1 The Owner is not responsible for the acts and/or omissions of, or contractually involved with, any subcontractors, suppliers of labor or materials, and/or their respective employees or agents or any other third-party claimants. Such claimants shall not constitute third party beneficiaries under this contract. The Contractor and/or his Surety solely shall deal with, take responsibility for, and be liable to such parties under this Contract. Contractor will indemnify and defend the Owner from any legal actions against Owner for unpaid bills of subcontractors.

§ 2.7 OWNER'S RIGHT TO OCCUPY THE PROJECT

§ 2.7.1 The Owner shall have the right to occupy or use without prejudice to the right of either party, any completed or largely completed portions of the project, notwithstanding the time for completing the entire work or such portions may not yet have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents. If the Contractor determines that said occupancy may cause a delay to the completion of the project, he shall notify the Owner in writing immediately.

§ 2.7.2 Refer to Article 11 Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

§ 2.7.3 If Contractor has not completed the obligations of the Contract Documents by the dates established by subsequent Amendments to the Agreement Between Owner and Contractor, and the Contractor fails to provide satisfactory resolution allowing the Owner to use the facility, the Owner shall have the right by whatever means defined herein to occupy or use a portion or all of the entire project at the Contractor's expense without relieving the Contractor of any obligation to provide and pay for services to complete the project including any penalty pursuant to terms provided herein.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor. Where a delay for any reason becomes known to the Contractor it shall be the Contractor's sole responsibility to address the delay by written notice as further defined within the agreement.

§ 3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

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

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

.3 that it is fully qualified under any state or local licensing laws for Contractors in effect at the time and at the location of the work, and all necessary governmental and public authorities having jurisdiction over it and over the Work and the site of the Project. The Contractor is responsible for determining that all of his subcontractors and prospective subcontractors are duly licensed in accordance with the law. and

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Contractor also represents by its execution of the Contract, that the Contractor has thoroughly reviewed all of the Contract Documents and that based on such review and to the best knowledge of Contractor as a contractor, not as a design professional, that said Contract Documents are sufficient to enable the Contractor to determine the Contract Sum and that the Contract Documents are sufficient to enable it to perform the Work described in the Contract Documents, and otherwise to fulfill all its obligations hereunder in accordance with the terms of the Contract. The General Contractor is to ensure that subcontractors have reviewed the entire set of Contract Documents to ensure that their full scope of work is included in their bid. Subcontractors are not to assume that their entire set of scope is shown on only a portion of the Contract Document sheets; coordination among different sheets may be required to ensure the full set of scope is included in their bid. Identification of any scope of work indicated in the Architects documents regarding other disciplines shall not be the sole descriptive documentation of that work. It is the Architects responsibility to confirm their consultants have included reference to work within the Architects work has been completely defined. The Architect shall bear the full liability for failing to do so.The Contractor further acknowledges and declares that it has visited and examined the site (but only as to visible surface conditions or conditions ascertainable from the results of any subsurface tests required or provided in connection with this Project, or other reports and documents available to the Contractor) and reasonably examined the physical, legal and other conditions affecting the Work including, without limitation, all soil, subsurface, water, survey and engineering reports and studies delivered to or obtained by Contractor and the conditions described in this Section 3.2.1. In connection therewith, Contractor, by execution of the Contract will be representing and warranting to Owner that it has, by careful examination, satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic and weather conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. In arriving at the Contract Sum, the Contractor has, as an experienced and prudent manager and contractor, exercised its reasonable judgment and expertise to include the impact of such circumstances upon the Contract Sum.

.1 Claims for additional compensation or time because of the failure of the Contractor to familiarize itself with visible surface conditions at the site or other conditions under which the Work is to be performed will not be allowed.

.2 The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project Site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum, Guaranteed Maximum Price, if applicable, or Contract Time in

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connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.

.3 The Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations. All contracts with subcontractors and suppliers shall be in writing. and shall reflect the terms of this Contract which directly or indirectly affect subcontractors or suppliers, including Owner's right to withhold payment, retainage requirements, and Owner's rights and liability on termination of this Contract. The Contractor shall require compliance with the terms and provisions of the Contract Documents applicable to them, including, without limitation, the requirement for subcontractors to comply with the prevailing wage rates established in the Contract, to maintain worker's compensation coverage on employees, and to provide certification of such coverage to Contractor.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor. In addition, as part of the Contractor's responsibilities to review the Contract Documents, the Contractor shall endeavor to detect any errors, omissions, or inconsistencies in the design and other documents which affect the performance or constructability of the Work. The Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation or initiating a Request for Information (RFI). The Contractor shall not ask the Architect for observation of Work prior to the Contractor's field superintendent's personal inspection of the Work and his determination that the work of all major subcontractors, to allow the subcontractor to demonstrate his understanding of the documents to the Architect and to allow the subcontractor to ask for any interpretation he may require. If, in the opinion of the Architect or the Owner, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents, and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed upon him by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services before additional services are performed.

.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

.3 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor his Warranty, he shall promptly notify the Architect in writing, providing substantiation for his position. Any necessary changes, including substitutions of materials, shall be accomplished by appropriate Modification.

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

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§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall notify the Owner prior to incurring such additional cost or expending such additional time, or if Contractor cannot reasonably provide notice prior to incurring costs or expending additional time, then as soon thereafter as reasonably possible, and may submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations including any extra efforts as required to bring the project back into alignment with the original schedule. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless (1) such errors, inconsistencies, omissions, differences, or nonconformities are the fault of Contractor, in whole or in part, (2) the Contractor failed to discover such errors, inconsistencies, omissions, differences, or nonconformities due to his failure to properly perform the obligations of Section 3.2.2 or 3.2.3, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, or nonconformities and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, or nonconformities as part of Contractor's performance of its obligations under the Contract Documents.

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

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, but only to the extent the Owner would be responsible for any such losses or damages under state and/or federal law.

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

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

§ 3.3.4 It is understood and agreed that the relationship of the Contractor to the Owner shall be that of an independent contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make the Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between the Owner and the Contractor. Any direction or instruction by the 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 the Contractor's independent contractor status as described herein.

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

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

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

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

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

§ 3.3.10 Should the Contractor fall behind schedule at any time, and when such delay is attributed to the Contractor, the Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on schedule at no cost to the Owner. In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, the Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action and recovery for completing the Work within the time limits, inclusive of previously accepted time extensions as set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide

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information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect. Upon review, the Owner shall make a final determination of cause. Any schedule, recovery plan, resequencing or related task associated with a delay must be accepted by the Owner; however, no approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.3.11 The Contractor is especially cautioned to coordinate the routing of mechanical and electrical items prior to commencing these operations.

§ 3.3.12 Contractor shall bear sole responsibilities 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, Sections 756.021, et seq. On trench excavations in excess of 5 feet in depth, Contractor shall pay a qualified engineer, experienced in the engineering design and preparation of drawings and specifications for compliance with state requirements for trenching and shoring, to prepare and professionally seal detailed drawings and specifications directing Contractor in the safe execution of trenching and shoring.

§ 3.3.13 Any time that the Contractors' employees, subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors are on site, the work shall be supervised by a qualified employee of the General Contractor. This representative shall be named prior to work beginning for Owner acceptance and is required to be on-site, in the area(s) where the subcontractor(s) are performing their work, at all times while the work is being performed and are to supervise the work and worker(s). Should the work entail after hours work in an active building, it is the Contractor's responsibility to ensure all doors to the facility are locked prior to departure. The Contractor's representative should be familiar with the work, the Project and should have sufficient knowledge and experience to properly supervise and review the work being performed. It shall be the Contractor representative's responsibility to coordinate access to the area of work and verify that the site has been cleared of all trash and debris prior to departure. The Contractor's representative shall unless otherwise designated, be solely responsible for ensuring the facility has been secured for the day. The Contractor's representative shall remain ON-SITE for the duration of the work period when any Scope of Work activities are taking place. This responsibility cannot be delegated to the Sub-Contractor. Contact information for the Contractor's representative shall be provided to the Program Manager at least 24 hours prior to the event.

§ 3.4 Labor and Materials

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

§ 3.4.2. The materials, products, and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products, or systems provided that same meets the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

.1 If, after award of contract, the Contractor of one of his Subcontractors, or Suppliers determines that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the work or to honor the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate Modification.

.2 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products on the Work in place of those specified only under the conditions set forth in specification referring to Product Options and Substitutions.

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.3 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; and (iii) when, in the judgment of the Owner or the Architect, a substitution would be in the Owner's best interests in terms of cost, time, or other considerations.

.4 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the proposed substitution; (ii) a written explanation of the reasons the proposed substitution is necessary, including the benefits to the Owner and the Work in the event the proposed substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in hard copy and electronic copy to the Architect and the Owner in sufficient time to allow the Architect and the Owner no less than twenty-one (21) working days for review, unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.5 Requests for substitution, received by the Architect later than forty-five (45) days after "Notice to Proceed" or "Date of Commencement of the Work" (whichever occurs first), may result in additional costs to the Owner. Contractor agrees to reimburse the Owner through deductive Change Order to the Contract, for all costs associated with such requests.

.6 By making request for substitutions based on Subparagraph 3.4.2 above, the Contractor

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equivalent or superior in all respects to that specified, and is suitable for the intended purpose;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

.7 Substitution requests shall be submitted on the forms included herein and in accordance with the process established in specification referring to Product Options and Substitutions.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE AND TOBACCO-FREE ZONES, OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAWS OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

.1 State law prohibits possession and/or use of alcohol and tobacco products of any kind on school property at all times.

.2 State law prohibits weapons or firearms on school property.

.3 There shall be zero tolerance for fraternization with students, teachers and any other school district

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personnel, Contractor will immediately remove any employee that violates this provision from the project.

.4 No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.

.5 The use of vapor products are not allowed anywhere on school property or the construction site during the course of the work.

§ 3.4.4 Prevailing Wages.

§ 3.4.4.1 The Contractor and each subcontractor who performs any portion of the Work must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code. The Contractor shall require all subcontractors to comply with the provisions of this Section 3.4.4 and its subparts.

§ 3.4.4.2 The Contractor and each subcontractor who performs any portion of the Work must pay not less than the prevailing wage rates attached as Exhibit "1" to this A201-2017 General Conditions document, as modified by the Owner, and incorporated herein as if fully set forth. In the event that a prevailing wage scale/schedule is not attached to the Agreement, the wage scale/schedule shall be the most recent scale/schedule adopted or determined by the United States Department of Labor for projects located in the County in which the project is located. 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.

.1 A Contractor or subcontractor who violates the provisions of these Sections 3.4.4.1 and/or 3.4.4.2 shall pay to the 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.

§ 3.4.4.3 Records: The Contractor and each subcontractor shall keep a record showing

.1 the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the Work; and

.2 the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

Owner may request samples of Contractor's and Subcontractor's payrolls at its discretion. Contractor and Subcontractor shall deliver such samples promptly upon demand.

Payment greater than the prevailing wage is not prohibited.

§ 3.4.4.4 In the event of a complaint of a breach of the requirements in Sections 3.4.4, 3.4.4.1 or 3.4.4.2 above, or any of the Section subparts of § 3.4.4, the Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation. Owner may conduct, at its discretion, wage-related interviews of any worker at the sites of the work without prior warning to the Contractor or Subcontractor.

§ 3.4.5 All employees and subcontractors of the Contractor shall be qualified by training and experience to perform their assigned tasks and shall be capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. At the written request of Owner or Architect, the Contractor shall not use in the performance of the Work any employee or subcontractor reasonably deemed by Owner to be incompetent, careless, or unqualified to perform the Work assigned to him, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times to perform the Work in the time periods required by the Contract.

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

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§ 3.4.7 The Contractor shall furnish Owner, on request, resumes of the Contractor's key personnel involved in the day-to-day Work including anyone to be considered as the after-hours representative on the Project.

§ 3.4.8 The Contractor shall furnish a list to the Owner, through the Architect, of all engineers, consultants, subcontractors and suppliers involved in construction.

§ 3.4.8.1 The Owner may reject or require removal of any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the project without cause.

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

§ 3.4.8.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the School District's Representative.

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

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

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

If Contractor and/or entities with which Contractor contracts do not have access to the results of a criminal history search, Contractor shall ensure all employees, applicants, agents, consultants, suppliers and/or subcontractors that have or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present, submit all information necessary and cooperate with the Owner in using the Owner's LEE Fast Pass process.

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

§ 3.5 Warranty

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

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further warrants to the Owner and the Architect that the Work will be performed and completed in a good and workmanlike manner and in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner. The warranties set out in this subparagraph are not exclusive of any other warranties, remedies or guarantees set out in other places in the Contract Documents or implied under applicable law, but are in addition to and not in limitation of any other such warranties, remedies, or guarantees.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials, equipment, machinery, components and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties on equipment, machinery, materials, components or labor from subcontractors, manufacturers, or suppliers, as appropriate, on the subcontractor's, manufacturer's, or supplier's approved forms and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents. All warranties shall include labor and materials.

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

§ 3.5.3.1 Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 8-hours' notice for warranty notice for the following:

1. Cooler and freezer equipment;
2. Chiller and pumps;
3. Boiler and pump;
4. Lift station;
5. Generator.
6. Major infrastructure
7. Water damage
8. Power outage from equipment failure

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

§ 3.5.5 Except when a longer warranty time is called for in the Contract Documents or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or Final Completion, unless otherwise provided for within the Contract Documents. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one-year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the one-year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one-year warranty period, Contractor shall accompany the Owner and Architect on re-inspection of the building and be responsible for correcting any deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-

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inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, etc., Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection are corrected.

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

§ 3.5.7 In the event an item under warranty fails, the Contractor shall extend the original warranty period by the period of time between Substantial Completion and until acknowledgement by the Owner that the claim has been resolved.

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

§ 3.5.9 All warranties shall be issued, tracked and resolved utilizing the software management programs directed by the Owner. Architect's responsibilities include, for each warranty, to input warranty into system, track Contractor's progress to ensure timely completion of warranty work and review completed work for acceptable completion. Contractor to input information into the system, as needed for each warranty, to successfully communicate progress of warranty completion to team.

§ 3.6 Taxes

§ 3.6.1 Tomball Independent School District is an exempt entity under the tax laws of the State of Texas, including, without limitation, the provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract may be exempted by issuing to suppliers an exemption certificate in lieu of tax. Exemption certificates comply with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate issued in lieu of tax shall be subject to State Comptroller of Public Accounts Ruling No. 95-0.09, as amended. Failure by the Contractor or Subcontractors to take advantage of the Owner's exemption and to obtain such exemption certificate shall make him responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the Owner. The Owner represents that this Project is eligible for exemption for the State Sales Tax on tangible personal property and material incorporated in the project, provided that the Contractor fulfills the requirements of the Limited Sale, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate material and labor costs at the time a Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from their suppliers and shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from the Owner. Contractor hereby RELEASES, INDEMNIFIES AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Sub-Contractor to comply with the provisions of any or all such laws and regulations.

§ 3.6.2 Intentionally deleted.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally

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required at the time bids are received or negotiations concluded. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use, occupancy, permits and licenses, pay all charges, deposits and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work; certificates of inspection, use and occupancy shall be delivered to the Architect and Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of Work unless otherwise provided by the Contract Documents.

§ 3.7.1.1 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Architect with their consultants shall work in conjunction with the Contractor to secure physical address identification where required for Permanent Utility Connection services. The Contractor shall inform the Owner when the Owner's participation is required. Connections for temporary and permanent utilities, tap charges, water meter charges and any other similar fees assessed by jurisdictional authorities having control over this project and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion. Contractor shall assist in transfer of all utility services to the Owner, as needed.

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

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

§ 3.7.4 Concealed or Unknown Conditions

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but

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shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct and approve in writing. All unused allowance amounts shall be credited back to Owner, along with any markup included in the Contract Sum on such unused amounts. Allowances shall be limited to those requested as part of the bid process, prior to execution of an agreement as part of negotiations or during the course of work associated with a Change Proposal Request or Construction Change Directive. It is feasible that a situation may occur following execution of this agreement when the Contractor, for reasons which are not within their control, may request the use of an Allowance for a dedicated cost. This is allowable only when the Owner approves it in writing. Such approval shall be attached as supporting documentation with the Change Proposal Request.

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent, project manager, and necessary assistants who shall be in attendance at the Project site during performance of the Work, including Punch List work. The superintendent and project manager shall represent the Contractor, and unless provided otherwise in Section 3.1.1, communications given to the superintendent or project manager shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within fourteen (14) days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection at that time.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent. Any change of personnel shall be initiated at least 30 days prior to the proposed date of implemented change. Contractor to supply a resume, for review by the Owner. If requested by Owner, the proposed personnel may also be asked for an interview or provide other information as needed for the Owner to make a decision. Contractor is to ensure a successful transition between personnel.

§ 3.9.4 The superintendent, project manager, and all on-site supervisory staff shall be satisfactory to the Owner and Architect in all respects, and Owner and Architect shall have the right to reasonably require Contractor to remove from the Project any superintendent, project manager, or on-site supervisor whose performance is not reasonably satisfactory to Owner and/or Architect, and to replace such superintendent, project manager, or on-site supervisor with a superintendent, project manager, or on-site supervisor reasonably satisfactory to Owner and Architect. For each new person proposed, Contractor to supply a resume, for review by the Owner. If requested by Owner, the proposed personnel may also be asked for an interview or provide other information as needed for the Owner to make a decision. Contractor is to ensure a successful transition between personnel.

§ 3.9.5 The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-or-command organizational chart shall be submitted to the Owner and Architect. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and shall not change such personnel or form of organization without the written approval of the Owner.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, and prior to the first application for payment, shall submit for the Owner's and Architect's review and approval, a Contractor's construction schedule for the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by

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the conditions of the Work and Project and, upon such revision, shall be submitted to Architect and Owner for their review and approval. In no case will the schedule be updated less frequently than each application for payment. The Contractor's schedule may be considered when evaluating a request for additional time. The schedule shall be transmitted in the form of Microsoft Project in the native file format. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) predecessors and successors; (5) phases; (6) baseline start and stop dates; (7) actual start and stop dates; (8) current start and stop dates; (9) delays; (10) critical path; (11) submittals; (12) extensions of the Contract Time authorized by Changes, and (13) Owner activities including timeframes for student testing which necessitates a quiet, undisturbed (sound, vibration, etc.) environment.

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

.2 The process of approving Contractor's schedules and updates to Contractor's schedule shall not constitute a warranty by the Owner that any non- Contractor milestones or activities will occur as set out on Contractor's schedule. Approval of a Contractor's schedule does not constitute a commitment by the Owner to furnish any Owner-furnished information or material any earlier than Owner would otherwise be obligated to furnish that information or material under the Contract Documents.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's and Owner's approval. The Architect's review and approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

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

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

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

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for

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submittal to the Owner upon completion of the Work as a record of the Work as constructed, and shall be signed by the Contractor certifying to Owner thereby that they show complete and "as-built" conditions, stating sizes, kinds of materials, vital piping, conduit locations, and similar matters.

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.4.1 Submittals shall be submitted at the earliest possible time in order to expedite delivery of critical or long lead time items. For more complex systems and equipment (such as structural steel; doors, windows and hardware; casework; mechanical, electrical, and plumbing systems and equipment; food service equipment; sound systems and the like), the Contractor shall schedule at least ten (10) business days for the Architect or his Consultants' review and submittals shall be sequenced logically in accordance with the schedule, required fabrication and installation time. No increase in Contract Sum or extension of time will be granted for cost increases or delays associated with Contractor's failure to issue submittals in a timely fashion.

§ 3.12.4.2 Where colors for products are to be selected by the Architect, the Contractor shall review the specifications for submittals and ensure compliance. Submittals requiring a color selection that is in an area of work should be submitted for the Architect's review and selection together so that the selections can be coordinated. All color/finish/aesthetic selections shall be approved by the Owner. The Architect is responsible for providing a Finish Selection presentation board which has been approved by the Owner. There will be at least (2) originals, (1) shall reside at the construction site and (1) shall reside with the Owner. Any variance from these selections must be approved by the Owner in advance of their implementation. As a part of the closeout, the Architect shall provide a final element which shall incorporate all of the approved finishes in a "D" ring binder. This binder shall include a finish schedule, a sample of materials used and a drawing/narrative where each finish was used.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect and Owner, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. If, in the opinion of the Architect or Owner, the Shop Drawings or similar submittals are (a) incomplete, (b) indicate an inadequate understanding of the work covered by the submittals, or (c) indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the

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Contractor for correction of these three deficiencies and subsequent resubmittal. Additional service charges as outlined in Section 3.2.6 may be charged by the Architect in this event. The Architect will take no action on Shop Drawings, Product Data, and Samples that have not first been certified, by stamped, signed notation, as having been checked and approved by the Contractor for use in the Work, or that are not specifically required by the Contract Documents.

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

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

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

§ 3.12.9.1 Deviation from the requirements of the Contract Documents indicated on shop Drawings, Product Data, and Samples, does not constitute the required notification in writing.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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

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

§ 3.12.11 The Contractor shall submit complete Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the contract for construction.

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§ 3.12.12 The Contractor shall submit digital PDF's of Shop Drawings, Product Data, and similar submittals in the proper format according to the procedures stipulated within the Contract Documents. Digitally submitted Shop Drawings will be reviewed and marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or resubmittal as required. Contractor corrections or revisions shall be resubmitted to the Architect in accordance with same procedures. The digitally marked up prints will be retained by the Architect and his consultants. Samples shall be submitted directly to the Architect for review.

§ 3.12.13 The Contractor shall provide composite drawings within four (4) weeks of corresponding submittals approval showing how all piping, ductwork, lights, conduit and equipment, etc. will fit into the ceiling space allotted or room allotted, including clearances required by the manufacturer, by Code, or in keeping with good construction practice and adequate access for maintenance and replacement of equipment. Space for all trade elements must be considered on the same drawing. Drawings shall be 1/4" per foot minimum scale and shall include invert elevations, elevation views and sections required to meet the intended purpose. Trades required to participate include, but are not necessarily limited to structural, mechanical, plumbing, fire sprinkler, electrical, data and special systems. The Contractor may propose an alternate method of accomplishing MEP coordination. If the alternate method is approved by the Architect and Owner, in writing, it may be utilized.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

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

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

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

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

§ 3.13.6 The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including parking of vehicles and entry into adjacent facilities.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

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cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

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

§ 3.14.4 Leave all chases, holes and openings, straight and true, of proper size, and cut them into existing work as may be necessary for the proper installation of the work. Consult with all Subcontractors concerned, regarding proper locations and size. In case of conflict between requirement for cutting and patching and any other requirement of the Work, submit request for direction before proceeding with the Work. In case of failure to leave or cut them in the proper place, openings shall be cut afterward at no expense to the Owner. No excessive cutting will be permitted, nor shall any piers or other structural members be cut without prior approval. After such work has been installed, satisfactorily and carefully fit around, close up, repair, patch, and point up all cuts. Work shall be done with proper tools by workmen of the particular trade to which work belongs and shall be done without extra expense to the Owner. No description of specific cutting, patching, digging, etc., required for the work under a Specification Section that may be required for the proper accommodation of that work to the work of other trades shall relieve the Contractor from responsibility described above.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than one time each week, clean up by removing rubbish, including old and surplus materials, to include dirt, debris, or trash. Contractor to maintain landscaping and lawn within their work area. Where construction debris has blown offsite, the Contractor remains responsible for cleaning up said debris. At no time shall trash, dirt or other debris be allowed to remain in any wall cavity, mechanical or ductwork item, ceiling plenum, crawl space or concealed space. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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

§ 3.15.3 Prior to the Architect's inspection for Substantial Completion the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roof, gutters, and downspouts; remove obstructions and flush debris from drainage systems; restore landscaping and lawn areas including correcting any grading issues resulting from construction; clean site ensuring that all construction debris is removed; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

§ 3.17 Royalties, Patents and Copyrights

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

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copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DEMANDS, AND SUITS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING SICKNESS, DISEASE AND/OR DEATH), PROPERTY DAMAGES, LOSSES (INCLUDING LOSS OF USE RESULTING THEREFROM), COSTS, AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THE CONTRACT, PROVIDED THAT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 3.18.1 SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT. THE CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, OR HOLD HARMLESS A PARTY OR PARTIES INDEMNIFIED HEREUNDER AGAINST ANY CLAIM CAUSED SOLELY BY (1) THE NEGLIGENCE OR FAULT OF THE PARTIES INDEMNIFIED, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE PARTIES INDEMNIFIED, (2) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE PARTIES INDEMNIFIED, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE PARTIES INDEMNIFIED, OR (3) THE BREACH OF CONTRACT OF THE PARTIES INDEMNIFIED, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE PARTIES INDEMNIFIED, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE PARTIES INDEMNIFIEDOBLIGATION SET FORTH HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF PARTIES INDEMNIFIEDTHAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, THE CONTRACTOR'S AGENT, OR THE CONTRACTOR'S SUBCONTRACTOR OF ANY TIER, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR SUITS ARE BASED IN WHOLE OR IN PART UPON THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, ITS OFFICERS OR ITS EMPLOYEES. THE INDEMNITY REQUIRED BY THIS PARAGRAPH 3.18.2 IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1.

§ 3.18.3 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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

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

§ 3.18.6 To the extent allowed by law, the Contractor agrees to insure the indemnity and hold harmless clauses contained in this Section 3.18, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in Article 11 and/or Section 11.2 of these General Conditions.

§ 3.18.7 The provisions of Section 3.18, including all of its subparts, shall survive the termination of the Agreement or the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 3.18 and its subparts.

§ 3.18.8 It is understood and agreed that Subparagraph 3.18 above is subject to, and expressly limited by, the terms and conditions of TEX. CIV. PRACT. & REM. CODE ANN. 130.001-130.005 (Vernon Supp. 1989), as amended or modified, or any successor statute. Contractor shall not be obligated under Subparagraph 3.18 to indemnify or hold harmless Architect or any agent, servant of employee of Architect from liability or damage that is caused by or results from:

.1 defects in plans, designs or specifications prepared, approved or used by the Architect; or
.2 negligence of the Architect in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs or specifications that are a part of the Contract Documents; and arises from:
  .**1** personal injury or death;
  .2 property injury; or
  .3 any other expense that arises from personal injury, death or property injury.

§ 3.18.9 It is agreed with respect to any legal limitations, now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

§ 3.19 Record Drawings

§ 3.19.1 At the completion of the Project, the Contractor shall submit complete "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items inside of the facility and underground utilities at the site. The drawings shall be submitted in an editable CAD format (native format) agreed to at the beginning of the project along with one (1) full sets of hard copy drawings, bound, and one digital copy in PDF format. These documents are to be considered part of the Work beyond the General Conditions. The documents shall not bear any professional seal or information other than project identification and date. This shall be completed and submitted for review and approval within thirty (30) working days from Substantial Completion.

§ 3.20 ANTITRUST VIOLATIONS

§ 3.20.1 Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1 et.seq. (1973). The Contractor shall include this provision in his contracts with each Subcontractor and Supplier. Each Subcontractor shall include such

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provision in contracts with Sub-subcontractors and suppliers.

§ 3.21 THIRD-PARTY BENEFICIARY

§ 3.21.1 No person or entity shall be deemed to be a third-party beneficiary of any provision(s) of this Contract; nor shall any provision(s) hereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect directly and with assistance of the Architect's Consultants will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction and through the 1-year warranty period including any warranty extensions due to failure of the product, material or workmanship where covered by warranty. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or expressly authorized by the Owner. The Architect shall be obligated to inform the Owner in writing of decisions made when acting on behalf of the Owner within 48 hours of that decision.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with and keep the Owner informed about the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will promptly inform Contractor and Owner of any non-compliance observed. The Architect will exercise care and diligence when on site in discovering and properly reporting to the Owner any defects or deficiencies in the Work of the Contractor or any of its Subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. The Architect will be required to make on-site inspections as necessary, during construction and through the 1 year warranty period, to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect and the Architect's Consultants will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

.1 At the completion of each site visit, the Architect shall by use of the Project Management Software, provide a field report of what was observed, noting defined in 4.2.3 and any resulting directive/recommendation made to the contractor regarding those items.

.2 The Architect shall provide photography of those concerns or successes. This photography shall be uploaded into Project Mates.

.3 Uploading the A/E's own field report in another format file without filling in the events in Project Mates is not an acceptable method of fulfilling this scope of work of Basic Services.

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

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

§ 4.2.6 The Architect and Owner each have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect and/or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 With the Owner's approval, the Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Any change affecting the Contract Sum or Contract Time must be approved in advance by the Owner in writing.

§ 4.2.8.1 Allowance Expenditure will be authorized using Allowance Expenditure authorizations (AEA) executed by the Owner, the Architect and the Contractor. All remaining Allowance funds will be credited back to Owner by Change Order at the completion of the project. Work authorized by an AEA may be invoiced as it is completed. Allowance funds cannot be considered for any other scope of work without the express approval of the Owner and shall not be considered as available in providing total cost of work at Bid.

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

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

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

§ 4.2.12 Interpretations and recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. In the event of a disagreement between the Architect and Contractor, the Owner will make the final determination after reviewing all of the information.

§**4.2.15** The Contractor shall not cover up work without the Architect and Owner performing an observation of such work where there is a stipulation to notify the Architect and Owner prior to cover up. Where the Owner has been stipulated in the Architect's Specifications or other Contract Documents as being a part of a process, their observation is also required prior to covering of any work. Both the Architect and Contractor shall work in concert to ensure the Owner has an opportunity to review concealed work prior to the covering. Where the Owner observes a deviation, the Contractor shall not cover the disputed work until the matter has been resolved. The Contractor shall be responsible for any and all associated costs to allow for observation of the work, uncovered, by the Architect and Owner. If the Contractor covers work without either the consent of the Architect and Owner or without providing the Architect and Owner with reasonable opportunity to observe the work, whether or not such work is found to be acceptable by the Architect or Owner, the Contractor shall repair such work at no cost to the Owner. A minimum of 5 working days' written notice must be given by the Contractor to the Architect and Owner to enable them to schedule their personnel for these observations.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site, away from the site, or otherwise to furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. The term "Subcontractor" includes persons or entities supplying materials or equipment for the Work.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site, away from the site, or otherwise to furnish labor or materials. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" includes persons supplying materials or equipment for the Work.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within fourteen (14) days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1)

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has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work and was rejected for a reason other than good cause, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. "Good cause" shall include, but not be limited to, Owner or Architect's prior experience of unsatisfactory work performed by the Subcontractor or debarment of the Subcontractor.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Prior to such change the Contractor shall notify the Architect of his intent and reasons for such proposed changes.

§ 5.2.5 The Owner may require the Contractor to change any Subcontractor or supplier previously approved by it, if such a change is due to failure of Subcontractor to perform in accordance with the requirements of the Contract. Where the Owner requires removal of a Subcontractor for such failure to perform, the Contractor shall be solely responsible for any increase in the cost between the new Subcontractor and the Subcontractor replaced by Contractor, taking into account any amounts which Contractor withholds or recovers in damages from the replaced Subcontractor. If Contractor requests any payment from Owner, Contractor shall provide Owner with satisfactory proof of such additional costs incurred by Contractor for Owner consideration. Such consideration shall not imply any obligation by the Owner to pay an increase. Contractor Proposed increase shall be made at the time of the change but in no case more than (5) business days from the effected change. Costs submitted after this time where that was no request for time or notice may at the Owner's discretion be dismissed.

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

§ 5.3 Sub-contractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor;

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.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract;

.3 such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; and

.4 the Subcontractor provides bonds as required by law of prime contractors, and by Owner.

If the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, but only to the extent permitted by law, and provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption, or for the payment to the Subcontractor or supplier for Work, if payment for such Work has previously been made to Contractor. Such liabilities or obligations shall remain with Contractor.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained for the Project.

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

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

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 6.2.6 The Contractor shall be responsible for any delays to a Separate Contractor caused by the Contractor or its Subcontractor.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, an approved Change Proposal Request issued by the Architect, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect, except when the Contract balance is amended as a result of Owner's Right to Carry out the Work under Section 2.4.1 or the Owner's assessment of liquidated damages as allowed by the Contract Documents. A Construction Change Directive requires the approval of the Owner and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued, subject to the Owner's approval, by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, approved Change Proposal Request, Change Directive, or order for a minor change in the Work.

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

§ 7.1.4.1 The Architect, upon receipt of written notification by the Owner of a proposed item of change in the Work, shall within ten (10) calendar days, prepare a Change Proposal Request. The Contractor upon receipt of a Change Proposal Request, shall within ten (10) calendar days, prepare a response to the Change Proposal Request in such form or forms as directed by the Architect and defined in the agreement showing all pricing, breakdowns and supporting documentation for review and written approvals from the Owner when required. Should either party be unable to meet this timeline, that party shall notify the Owner prior to the required deadline with a confirmed date for when the work will be completed. Failure to meet these timelines will affect payment to the degree determined by the process in place. As providing proper documentation is part of Basic Services, should either continue to fail to provide the required notifications and required paperwork, that party shall be solely responsible for any delays and associated costs. First the Architect and then The Owner will review the issues. The Owner will make the final determination in cost or schedule impact. If the Architect fails to provide revised drawings for work and issues the CPR for Owner review and approval and the work has to be done, and if that failure to respond removes or limits the Owner's right to choose an option, the Architect may be found liable for the entire corrective or additive cost.

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.1 At the outset of the project, the Team will review and discuss the organizational structure and numbering system to be used. Once the system is established all documentation shall align with that system or be considered non-responsive.

.2 Each separate Change Proposal shall be numbered consecutively and shall include all cost related to the proposed Change in the Work, including any disruption or impact on performance.

.3 The Contractor shall include all costs and supporting documentation, including the Subcontractor's, in itemized accounting and shall be included with the Change Proposal;

.4 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Architect shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Contractor for repricing;

.5 A revised Change Proposal shall be the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix;

.6 Upon written approval of a Change Proposal by Owner, the Architect and the Contractor, the Architect will prepare an Allowance Expenditure Authorization or Change Order authorizing such change in the Work; and

.7 The Contractor shall request extensions of Contract Time due to changes in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a Contract Time extension. Any request for extensions of Contract Time must be substantiated through the demonstration of the impact of the proposed item of change in the work to the critical path schedule for the project.

.8 Should the Contractor not be able to assess the extent or if there is a potential change in the Contract Time, the Contractor shall make this statement in the Change Proposal Request with a date not to exceed (14) calendar days from the date of issuance of the Change Proposal Request for which the Contractor must make a claim.

§ 7.2 Change Orders

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

.1 The change in the Work;

.2 The amount of the adjustment, if any, in the Contract Sum; and

.3 The extent of the adjustment, if any, in the Contract Time.

§7.2.2 No change in the Work shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such change has been authorized by a Change Order executed by the Architect, Contractor and Owner and issued to each party in accordance with the Contract Documents. Changes in the Work may be made without notice to Contractor's sureties and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

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

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and, if required by the Owner, the Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

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.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall make a recommendation of the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount, all subject to the approval of the Owner. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others at rates that are no greater than market rates in the locale of the Work at the time of the Work. Unless otherwise established in the Contract, the rental value of the Contractor's own equipment shall not be more than the normal local rental rate for similar equipment;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change Work, except that sales, use or similar taxes to which the Owner is exempt shall not be included in the calculation of costs; and
.5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15. If the Contractor fails to make a Claim in this situation in accordance with Article 15, the decisions regarding costs will be made by the Owner and shall be final.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved regardless of the Contractor's agreement with or disagreement with the adjustment in the Contract Sum or Contract Time or the method for determining them, and shall promptly advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

§ 7.3.8 Intentionally Deleted.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified, which shall be further subject to the Owner's review, modification, approval, or rejection. The Architect's interim determination of cost, as modified and/or approved by the Owner, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Contractor to disagree and assert a Claim in accordance with Article 15.

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

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§ 7.4 Minor Changes in the Work

The Architect may, subject to Owner approval, order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum, Allowances, Contingencies or Contract Time, the Contractor shall notify the Architect. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum, Allowances, Contingencies or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Owner shall also retain authority to order such minor changes in the Work.

§ 7.5 ALLOWABLE MARKUPS FOR CHANGES IN THE WORK

§ 7.5.1 All proposals for a change involving an increase or decrease in the amount of the Contract Sum shall be submitted by the Contractor in a completely itemized breakdown form acceptable to the Owner and Architect that shall include, but not be limited to, the following:

1. Material quantities and input prices (separated into trades).
2. Labor costs.
3. Construction equipment.
4. Worker's Compensation and Commercial General Liability insurance and other insurance required by the Contract Documents.
5. Social Security Tax.
6. General Conditions.

Furthermore, unless otherwise directed, the procedure and markup of the costs for additional work shall be determined in the following manner:

.1 Upon Change Proposal request, the Contractor shall quote the cost for changes in the work showing separately, credits and additional costs broken down by headings used in the Schedule of Values. Further breakdown into units of labor and materials may be required if agreement on cost cannot be reached using the breakdown by headings. The final cost shall be the amount of the Total Contract Value Change shown on the Change Proposal signed by the Contractor and Owner. For general construction work, not subcontracted, the Contractor shall consider as costs the actual invoice amount for additional materials, the sales tax on additional materials when applicable, the wages paid for additional direct labor, plus the Contractor's usual markup of wages to cover additional labor related costs such as insurance, taxes and fringe benefits.

.2 On changes executed within the Owner's Contingency Allowance, Contractor shall have included costs for combined overhead and profit, to the extent permitted by the Contract Documents, and General Conditions costs, including the cost of superintendents, field office expense, temporary facilities and services, small hand tools, construction equipment not specifically provided for the change in hand, home office expense, bond and building insurance premiums, and managing the Subcontractor's work, in his Base Contract amount. Allowed overhead and profit fee on Owner's Contingency Allowance changes to be included in the total cost to the Owner shall be based as follows:

.1 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.

.2 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractors.

The Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested by Owner, from any Subcontractor or supplier.

On proposals involving increases in the amount of the Cost of the Work, and not expended from a contingency or allowance, overhead and profit will be allowed on the net increase. Tax shall not be included on any work.

On proposals credited to a contingency or allowance, full credit, including overhead and profit, shall be given for decreases in the Cost of the Work.

§ 7.5.2 Should a situation arise where proposed changes will exceed the Owner's Contingency Allowance or a listed Allowance, that overage shall be noted in the proposed change document. It is the Contractor's responsibility

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to make this notice and the Architects responsibility to verify the claim. If any additional Work is authorized outside of or in excess of the Owner's Contingency Allowance, the combined overhead and profit for this work shall be based as follows:

.1 For the Contractor, for Work performed by the Contractor's own forces, a maximum total markup of ten percent (10%) of the actual cost on a lump sum project, or the Contractor's Construction Phase Fee on a Guaranteed Maximum Price Project.

.2 For Work performed by the Contractor's Subcontractor(s), five percent (5%) of the amount due the Subcontractor(s).

.3 For each Subcontractor or Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, a maximum markup of five percent (5%) of the actual cost.

.4 For each Subcontractor, for work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.

.**6** For changes funded through an allowance, unit prices, or any use of contingency, the amount which can be charged is zero (0%).

§ 7.5.3 In order to facilitate checking of quotations for extras or credits, all proposals, (except those so minor that their propriety can be seen by inspection), shall be accompanied by a complete and detailed itemization of costs including labor, materials, and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change be approved without such itemization and supporting documentation.

§ 7.5.4 Change orders, as they are accepted by the Owner, shall be entered under heading "Change Orders" in the next current Request for Payment. Change Proposal Request that have been incorporated into the work shall be entered under heading "Change Proposal Requests" in the next current Request for Payment. Billing against this work shall be shown as a percentage complete corresponding to the specific Change Proposal Request.

§ 7.5.5 All credits to or deductions from the Contract Sum, a Contingency or an Allowance shall be calculated using the same methodology set forth in this Section 7.5. All unused Contingency or Allowance amounts shall be credited back to Owner prior to final payment, along with any markups included in the Contract Sum on such unused amounts.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement shall be the latter of either day that the Contractor receives a Notice to Proceed from the Owner or the first business day following the receipt of the Building Permit The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by the Owner in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect and Owner in accordance with Section 9.10. Unless otherwise agreed in writing by the Owner, the Contractor agrees that Final Completion shall occur not more than sixty (60) days after the date of Substantial Completion.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an authorized employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unavoidable casualties, or other causes beyond the Contractor's control or which do not arise through the action or inaction of Contractor or its Subcontractor or suppliers, could not have been reasonably anticipated and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; (4) by delay authorized by the Owner pending mediation then the Contract Time shall be extended for such reasonable time as the Architect may determine subject to the Owner's concurrence. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract. Notwithstanding anything herein to the contrary, extension of time provided for the completion of the Work shall be Contractor's sole remedy for delay, unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the Work and where to the extent that such acts of Owner continue after Contractor's notice to Owner of such interference.

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

§ 8.3.3 This agreement does not permit the recovery of damages by the Contractor for delay or disruption or for extensions of time due to bad weather or Acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time. Owner's exercise of any of its rights under the Contract Documents, including without limitation, its rights under Article 6, changes in the work, regardless of the extent or number of such changes or Owner's exercise of any of its remedies of suspension of the work or requirement or correction or re-execution of any defective work, shall not, under any circumstances, be construed as interference with Contractor's performance of the work and shall not entitle the Contractor to any additional compensation.

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

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

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

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

§ 8.4 Liquidated Damages

§ 8.4.1 The Work to be performed under this Agreement shall be substantially completed by the date noted in the Proposal Form, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence of this Contract and that the pecuniary damages which would be suffered by the Owner, if the Contractor does not substantially complete all Work called for in the Contract Documents by the specified date, are in their very nature difficult of ascertainment. It is therefore

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expressly agreed as a part of the consideration inducing the Owner to execute this Contract that the Owner may deduct from the final payment made to the Contractor a sum equal to $1000 for each and every Calendar Day beyond the agreed date for Substantial Completion of the Work included in this Contract and $500 for each and every Calendar Day beyond Final Completion as defined in Section 9.8 Substantial Completion. It is expressly understood that the said sum per day, per site, is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially completed within the agreed time, or within the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty or forfeiture, said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum, as stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.1.1 The Owner is exempt from payment of Texas State Sales Tax on materials required for the Work. The Texas Sales Tax Exemption Certificate will be provided by the Contractor within ten (10) days of award of Contract.

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

§ 9.1.3 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum, the Contractor shall submit a schedule of values to the Architect and the Owner for Approval no later than twenty (20) days prior to submission of the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect and the Owner. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The General Contractor shall not be in compliance with the submission requirement of the Schedule of Values until all of the items identified in 9.2 and its subsections have been defined and approved in writing by the Architect and Owner.

§ 9.2.1 General Contractor's cost for Contractor's fee, bonds and insurance, General Conditions, etc., shall be listed as individual line items.

§ 9.2.2 Schedule of Values shall break each line into materials and labor. Once approved by the Owner and Architect, it shall be used as the basis for reviewing Application for Payment but not be taken as evidence of market or other value.

§ 9.2.3 Contractor's cost for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items and shall be further broken down into material and labor, as applicable.

§ 9.2.4 On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule shall indicate line items and amounts in detail, (for example; underground, itemized major equipment, fixtures, installation of fixtures, start up, etc.). These subdivisions shall appear as individual line items and shall be further broken down into material and labor, as applicable.

§ 9.2.5 Costs for subcontract work shall be listed without any addition of General Contractor's costs for overhead, profit or supervision.

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§ 9.2.6 The Contractor shall include a value for the coordination documents/drawings and as-built drawings as defined in this document, on the schedule of values.

§ 9.2.7 The Contractor shall include a value for the correction of deficiencies noted by the Commissioning Agent, if applicable, and the Test, Adjust and Balance consultant on the schedule of values for each sub-contractor subject to commissioning and test, adjust and balance requirements.

§ 9.2.8 The Schedule of Values shall be prepared and submitted as stipulated in the Contract Documents and in this Section.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. In addition the Contractor shall submit with each Application for Payment Exhibit D – Contractor's Invoicing Checklist.

- **.1** With each Application for Payment, the Contractor shall include Exhibit D – Contractor's Invoicing Checklist.
- **.2** The checklist shall have all questions answered and be executed by the Contractor's designated contact.
- **.3** Where the Contractor cannot respond "yes" to any question covered by the invoiced scope of work, the Contractor shall contact the Program Manager for approval prior to submission of the invoice. Program Manager's approval shall be attached to the invoice.
- **.4** Failure to answer "yes" to any question without prior approval will result in your invoice being automatically rejected.
- .5 Prior to the Architect approving the Contractor's Application for Payment, the Architect shall verify the Checklist is attached and its status. The Architect shall not approve an Application for Payment where all of the required documents are attached and correctly applied.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and (ii) by conditional lien waivers on the form provided releasing all liens and lien rights with respect to Work for which the Owner is making payment on this Application for Payment from Contractor and all its subcontractors and material suppliers and (iii) from the second payment forward, by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request on the form provided from Contractor and all its subcontractors and material suppliers. When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors and material suppliers. Applications for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls and such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner.

§ 9.3.2 Payments will be made on account of materials or equipment 1) incorporated in the Work; 2) suitably stored at the site; or 3) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

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

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

The Contractor acknowledges that the review of materials and/or equipment stored off the site is an additional service of the Architect, and the Contractor shall be charged for that service. The cost for such service will be established by the Architect and is not subject to appeal.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 9.3.5 The Contractor shall submit requests for payment, using AIA Document G702, Application and Certificate of Payment, as the cover sheet. Continuation sheets showing in detail the amounts requested, etc., shall be submitted using AIA Document G703, Continuation Sheet, or a computerized version of these documents previously approved for use. The information provided on the continuation sheets in the Description of the Work and Scheduled Values columns shall match the corresponding information shown on the approved Schedule of Values. All blank spaces on AIA Document G702, Application and Certificate of Payment, must be completed and the signatures of the Contractor and Notary Public shall be original on each form. By submitting his application for payment, the Contractor certifies that the individual signing the application is authorized to do so.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Owner shall have the right to reject, modify, or approve the Architect's Certificate for Payment in whole or in part, and shall have the right to make the final determination of the payment to be made to the Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the

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

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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

§ 9.5.5 The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to any provision of the Contract Documents or withholds in reliance on any such Contract Document provision in good faith, or withholds, in good faith, in reliance on information that has come to the attention of the Owner that Owner reasonably believes constitutes sufficient reason to withhold payment, and, no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

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§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall review the Application for Payment and the Architect's Certificate and shall make payment or withhold payment in the manner and within the time provided below:

.1 Based upon the applications for payment and supporting documents submitted to the Architect by the Contractor and certification of the amount payable by the Architect, the Owner shall make progress payments of undisputed amounts on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the last day of the month as follows:

.2 Not later than twenty (20) working days following the first Wednesday of each month, ninety-five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing (subject to the conditions listed in the Contract Documents), for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner. At the preconstruction project kickoff meeting, the protocol for submission of Applications for Payment shall be determined. Should an agreement on that protocol not be reached, then the Applications for Payment shall be submitted by the first Wednesday of the month or monthly date as determined by Owner.

.3 Upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to ninety-five percent (95%) of the Contract Sum, less such amounts as the Architect shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors and any other parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts. The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work, and before using any part of the payment from the Owner for any other purpose. More specifically, if only five percent (5%) retainage is withheld by the Owner on payments to the Contractor, then the Contractor shall withhold only five percent (5%) retainage on payments to subcontractors; and subcontractors shall withhold only five percent (5%) retainage on payments to sub-subcontractors. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. The Owner shall have the right at all times to contact Subcontractors and material and equipment suppliers to ascertain whether they have been properly paid. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties. In the event Owner receives any notices of non-payment from parties furnishing labor, materials, equipment or services for the Work, progress payments and/or final payment may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties for such amounts as the Contractor agrees or the Owner determines are due. Notwithstanding any other provision in the Contract Documents, neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner may notify the Contractor.

§ 9.7 Failure of Payment

§ 9.7.1 The Contractor shall have the right to stop work for Owner's failure to pay undisputed amounts only in accordance with the provisions of applicable law.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, pursuant to the Contract the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Operation and maintenance data shall have been submitted and approved, system demonstrations have been performed, and a certificate of occupancy shall have been issued before Substantial Completion can be achieved. The Work will not be considered suitable for Substantial Completion review until all required governmental inspections and certifications have been made and posted, all final finishes within the Contract Documents are in place as required by the Specifications, and there shall have been a completion of and acceptance by Owner of all major punch-list items and a majority of minor items of a cosmetic nature, so that the Owner could occupy or otherwise utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under the Owner) normal business operations. All work that could interfere with the Owner's use following Substantial Completion shall be performed by the Contractor after hours and coordinated with no disruption to school activities at no additional expense to the Owner. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within sixty (60) consecutive calendar days following the date of Substantial Completion. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items. In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents. A Certificate of Occupancy issued by the governing agency is not the sole indicator of Substantial Completion, but is a required element of Substantial Completion. In addition to the requirements of the Contract Documents, it is expressly understood that the establishment of Substantial Completion is subject to the following and shall include full functionality of all major systems to be fully operational and in place. Major systems shall be defined to include but not limited to all Civil, Site Improvements and Amenities, Structural, Architectural, Mechanical, Electrical, Plumbing, Data, Security, Video and Audio Systems as well as installation of all Owner Furnished Contractor Installed equipment and infrastructure. Where a complete system requires both the Contractor and Owner to provide work, the Contractor shall provide completion of the Contractor's scope of work that allows the Owner reasonable time to complete the Owner's scope of work:

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1. An approved and issued Final Certificate of Occupancy conforming to the requirements of the location jurisdictional authority must be signed by the Contractor and delivered to the Owner.
2. All fire alarm system components must be completed and demonstrated to the Owner.
3. Local fire marshal approval certificate must be delivered to the Owner.
4. All HVAC air and water balancing must be complete including all responses showing complete on Commissioning and Test & Balance Report performed by the Owner's Consultant.
5. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
6. All school communications equipment and telephone systems must be complete and demonstrated to the Owner.
7. All final lockset cores must be installed.
8. All room plaques and exterior signage must be complete.
9. All required Owner demonstrations and training must be completed, including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
10. All exterior clean-up and landscaping must be complete.
11. All final interior clean-up must be complete.
12. All operation and maintenance manuals must be complete and delivered to the Owner in the prescribed format.
13. Flood elevation certificate furnished and accepted by County
14. All required commissioning must be complete
15. Where the Contractor is required to assist and make adjustments to any building system which the Owner's consultants are performing Commissioning and Test & Balance work, the cost of the assistance shall be included in the Contractors Basic Scope of work set forth when the project began.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment and indicating the date for completing each listed item in accordance with 9.8.5.1. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Architect and/or Owner shall have the right to add additional items to be completed or corrected to the comprehensive list submitted by the Contractor.

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

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

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine dates of Substantial Completion. Any fee which

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Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.5.1 After the date of Substantial Completion of the project as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of sixty (60) days, unless extended by mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion. Failure by the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In the report of deficiency, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) additional days, the Owner will initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14.2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies within sixty (60) days after the date of Substantial Completion, unless extended by mutual agreement or provision of the contract, will be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more than one re-inspection after notification by the Contractor that corrections are complete, the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor.

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

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, at its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted. Final Completion includes submittal of all required closeout and record documents and completion of all punch list items and Work identified in the Contract Documents. No Retainage will be released until the complete Closeout Documentation Package has been received and accepted by the Owner including all As-Built documents in their required format.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer, if such consent is necessary, and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect or Owner.

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

§ 9.9.3 Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents nor constitute acceptance of Substantial Completion of that area.

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) 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 Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Prior to final payment, the Contractor shall meet all of the requirements of Owner's Closeout Procedures.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and, if necessary, written consent of the surety, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, and accepted, less retainage. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Nothing in this subsection is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.

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

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The performance of the foregoing services shall not relieve the Subcontractors of their responsibilities for the safety of persons and property and for compliance with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to the conduct of the Work.

§ 10.2.10 The Contractor shall be responsible for taking all precautions necessary to protect the Work in place from any foreseeable weather conditions which could cause any potential damage to portions or all Work in place. The

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Contractor shall be responsible for performing all repairs and/or replacement of any Work that results from foreseeable weather conditions.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Contractor and Architect shall then proceed in the same manner described in section 10.3.2.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Paragraph deleted.

§ 10.3.4 Paragraph deleted.

§ 10.3.5 Paragraph deleted.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all costs and expenses thereby incurred, but only to the extent provided by law.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 Materials Containing Asbestos, Lead or PCB's

§ 10.5.1 The Contractor and each Subcontractor, Sub-subcontractor and supplier, prior to final payment, shall submit a notarized statement on their letterhead certifying "to the best of their information, knowledge and belief, asbestos, asbestos-containing materials, and PCBs have not been used or incorporated into the Work and lead or lead-bearing materials have not been incorporated into potable water systems, purpose of definition as used in this statement, the term "potable water systems" includes, without limitation, those water systems for drinking fountains, all sinks, showers, bath tubs, residential and commercial kitchen equipment, ice machines, and hose bibs, as applicable to the Project.

§ 10.5.2 To the best knowledge of the Owner, the Architect and his consultants, no products or materials containing asbestos or polychlorinated biphenyl (PCB) or other toxic substances have been specified for this Project. In the event the Contractor or his Subcontractors become aware that any products or materials specified, ordered, scheduled for or already incorporated in the Work on this Project, contain any hazardous material, whether stated in Section 10.4.1 or not, the situation shall be reported immediately to the Owner and Architect in writing. An acceptable, equal substitute for the product or material in question shall be proposed by the Contractor and the

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product or material in question, if already onsite or incorporated in the Work, shall be removed from the site immediately and returned to the supplier or manufacturer.

§ 10.5.3 As a part of the Project Close Out process and prior to receiving payment of any of the retainage, the Contractor and his Subcontractors shall submit notarized affidavits and MSDS certifying that hazardous materials were not incorporated into the construction of the Project.

ARTICLE 11 INSURANCE AND BONDS

The Owner requires the minimum insurance coverages as set forth in Exhibit A and Exhibit B.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall provide a Performance Bond, in the penal sum equal to one hundred percent (100%) of the Contract Sum, if the formal Contract is in excess of One Hundred Thousand Dollars ($100,000.00) and a Labor and Material Payment bond, in the penal sum equal to one hundred percent (100%) of the Contract sum if the formal contract is in excess of Twenty-Five Thousand Dollars ($25,000.00).

§ 11.4.2 The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an attached authorized power of attorney. Such Bonds shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of a least A-X and included on the U.S. Department of the Treasury Listing of Approved Sureties (Dept. Circular 570).

§ 11.4.3 The Performance Bond Form and the Payment Bond Form included herein shall be executed and submitted to the Architect in duplicate prior to commencement of the work. The surety companies must be acceptable to the Owner and licensed admitted carriers in the State of Texas; and the companies must appear in a current Federal Treasury list as Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring companies.

§ 11.4.4 Each bond shall be of penal sum equal to one hundred percent (100%) of the Contract Sum and shall be compatible with the provisions of the governing authority. The Contractor shall file copies of each bond with the county clerk and furnish the Owner with a file receipt. The bonds shall remain in force throughout the warranty period of the contract. The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an authorized power of attorney attached.

§ 11.4.5 Claims must be sent to the Contractor and his Surety in accordance with Article 5160, Revised Civil Statutes. The Owner will furnish in accordance with such Article, a copy of the Payment Bond as provided therein to claimants upon request. All claimants are cautioned that no lien exists on the funds unpaid to the contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his Surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no responsibility because of any representation by any agent or employee.

§ 11.5 WORKER'S COMPENSATION INSURANCE COVERAGE

§ 11.5.1 Comply with the requirements of Rule 28, TAC §110.110, Reporting Requirements for Building or Construction Projects for Governmental Entities

§ 11.5.2 DEFINITIONS:

.1 Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing service as on a project, for the duration of the project.

.2 Duration of the project –includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

.3 Persons providing services on the project ("subcontractor" in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any

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such 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 delivery, and delivery of portable toilets.

§ 11.5.3 The Contractor 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 Contractor providing services on the project, for the duration of the project.

§ 11.5.4 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§ 11.5.5 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

§ 11.5.6 The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

.1 A certificate of coverage, prior to that person beginning work on the projects so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project, and

.2 No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

§ 11.5.7 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§ 11.5.8 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§ 11.5.9 The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's 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 coverage.

§ 11.5.10 The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet 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.

.2 Provide the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.

.3 Provide the Contractor, prior to the end of the coverage period shown on the current certificate ends during the duration of the project.

.4 Obtain from each other person with whom it contracts, and provides to the Contractor:

.1 A certificate of coverage, prior to the other person beginning work on the project, and

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

.5 Retain all required certificates of coverage on file for the duration of the project and for one year thereafter.

.6 Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project, and

.7 Contractually require each person with whom it contracts, to perform as required by sections (1)-(7),

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with the certificates of coverage to be provided to the person for whom they are providing services.

§ 11.5.11 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other actions.

§ 11.5.12 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.1 In the event of failure of a specified project, either during construction or the correction period, the Contractor shall take appropriate measures with the manufacturer of the product to assure correction or replacement of the defective products.

§ 12.2.1.2 Refer to Owner's Closeout Procedures, if applicable, for further terms regarding warranties which will be required prior to final payment.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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§ 12.2.2.1 Approximately eleven months after substantial completion, the contractor shall accompany the Owner and Architect on an "end of the one year correction period" reinspection of the Project. Additional deficiencies observed or reported shall be corrected by the Contractor.

§ 12.2.2.3 Intentionally deleted

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the warranty period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

§ 12.3.1 If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

§ 12.3.2 The Owner's use and/or occupancy of any or all of the Project site shall never be construed as an acceptance of Work not in conformance with Contract Documents. The Owner reserves the right to enforce provisions of the Contract unless the Owner's acceptance is provided to the Contractor in writing.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

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§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner, if they choose, may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located in accordance with Texas Government Code Section 2251.

§ 13.6 EQUAL OPPORTUNITY

§ 13.6.1 The contractor shall maintain policies of employment as follows:

.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

§ 13.7 CRIMINAL BACKGROUND CHECKS

The Contractor/Subcontractor shall certify the Criminal Background Check, as stated in Owner's Board Policy CJA and the form included in the Project Manual, as required by Texas Education Code Section 22.0834 and Texas Administrative Code Section 153.1101 and 153.1117, and shall comply with all requirements of such laws and policy.

§ 13.8 REQUIRED CERTIFICATIONS

§ 13.8.1 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

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Terrorist Organization by the U.S. Secretary of State under federal law. Contractor hereby certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and contractor agrees that 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.

§ 13.8.2 Companies that Boycott Energy Companies SB 13. By entering into this Agreement, 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.

§ 13.8.3 Companies that Discriminate Against Firearm Industry SB 19. By entering into this Agreement, 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

§13.9 Certificate of Non-segregated Facility

§13.9.1 This section is applicable to Contracts and Subcontracts exceeding ten thousand dollars ($10,000.00) that are not exempt from the provisions of the Equal Opportunity Clause.

§13.9.2 By the signing of this Contract, the Contractor signifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The undersigned agrees that a violation of this certification constitutes a breach of this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, Work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The Contractor further agrees that (except where it obtained identical certifications from proposed consultants for specific time period) it will obtain identical certifications from proposed Subcontractors prior to the award of a contract exceeding ten thousand dollars ($10,000.00) that are not exempt from the provisions of the Equal Opportunity Clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods): Notice to Prospective Subcontractors of requirement for certification of non-segregated facilities. A certification of non-segregated facilities, as required by the May 19, 1967 Order (32 FR 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding ten thousand dollars ($10,000.00) which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed as of the date of the notice, plus costs of demobilization.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- **.1** Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- **.2** Accept assignment of subcontracts pursuant to Section 5.4; and
- **.3** Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum 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 Contractor is responsible; or
- **.2** that an equitable adjustment is made or denied under another provision of the Contract.

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§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- **.1** cease operations as directed by the Owner in the notice;
- **.2** take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- **.3** except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed up to date of receipt of the notice of termination, plus costs of demobilization.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, an extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner, Architect, and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Nothing herein shall require the Owner to make or file a Claim in order to assess liquidated damages provided for in the Contract Documents.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within ninety (90) days after occurrence of the event giving rise to such Claim or within ninety (90) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, such a Claim shall be documented in accordance with Article 8 and notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the work, the date upon which each cause of delay ceased to affect the progress of the work and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. In addition to required time to be included in the Contract, the Contractor shall allow for four (4) days in the Fall Semester and four (4) days in the Spring Semester for state testing. During this time the Contractor may not be allowed to do any work without prior approval. Where these days are not required to be taken by the Contractor the Owner shall retain the right to recover those days or allow them to remain by adjustment of the Substantial Completion date.

Additionally, any Claim for additional time based on adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of scheduled construction.

1. Weather data obtained from the local project weather station specified in the Contract Documents shall form the baseline for estimating anticipated delays and project durations and determining the occurrence of unusually severe weather. The weather station should be installed and fully operable within thirty (30) days of Notice to Proceed. The table below indicates the number of days per month that the anticipated weather is expected to be adverse. Contractor shall incorporate this information into their Work plan.

a.

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

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

2. Submission for Time Extension
   a. Although the Contractor is required to document the occurrence and effect of adverse weather on the work, it does not relieve the Contractor/Architect of its responsibility to investigate and determine if an excusable delay has occurred.
   b. The schedule of Anticipated Adverse Weather Days included in the contract is established in work days. Similarly, actual weather data should be collected and recorded on a work day basis. Monthly summaries should be maintained indicating actual adverse weather conditions and the impact on work activities.

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c. To determine if any particular month experienced Adverse Weather Days, the number of actual Adverse Weather Days is compared to that as provided by the Anticipated Adverse Weather Days. If the number of Adverse Weather Days is greater than the Anticipated Adverse Weather Days, then the Contractor has experienced unusually severe weather.

d. THE DETERMINATION THAT UNUSUALLY SEVERE WEATHER OCCURRED DOES NOT AUTOMATICALLY MEAN THAT THE CONTRACTOR RECEIVES A TIME EXTENSION FOR THE DIFFERENCE OF DAYS BETWEEN THE ANTICIPATED AND ACTUAL ADVERSE WEATHER DELAY DAYS. Further analysis is necessary to determine if the unusually severe weather delayed work activities critical to contract completion. The Contractor's progress schedule must be evaluated to make this determination. If it is found that unusually severe weather delayed the contract, a contract modification shall be issued pursuant to Gov. Code 2269.

e. The Contractor shall bear the entire economic risk of all weather delays and disruptions and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect in writing 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. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation.

f. The parties agree that the reconciliation of the change attributable to Adverse Weather days will occur at the time of project final completion.

§ 15.1.7 Waiver of Claims for Consequential Damages

Intentionally deleted

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those alleging an error or omission by the Architect or those arising after expiration of the period for correction of the Work, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. If the parties are unable to agree, any claim, dispute or matters arising out of the contract between the Architect, Owner and Contractor or any combination of those parties shall be submitted to a court of appropriate jurisdiction.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties, but subject to mediation, if both parties so agree, and subject to legal or equitable proceedings in a

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court having jurisdiction thereof. It is understood and agreed that, in the event that any dispute, controversy, or conflict arises during the design and construction of the Project or following its completion, the parties hereto will cooperate in good faith, if possible, to resolve the issues without resorting to litigation.

§ 15.2.6 Intentionally deleted

§ 15.2.6.1 Intentionally deleted

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

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.2.9 The prevailing party in any judicial proceeding arising from the Contract Documents shall recover its reasonable and necessary attorneys' fees.

§ 15.3 Mediation

§ 15.3.1 The parties may mutually agree to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing unless stayed for a longer period of agreement of the parties or court order.

§ 15.3.2 Intentionally deleted

§ 15.3.3 Intentionally deleted

§ 15.3.4 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 thereof.

§ 15.4 Arbitration

§ 15.4.1 The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted

§ 15.4.2 Intentionally deleted

§ 15.4.3 Intentionally deleted

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Paragraph deleted.

§ 15.4.4.2 Paragraph deleted.

§ 15.4.4.3 Paragraph deleted.

ARTICLE 16 ADDITIONAL PROVISIONS

§ 16.1 The Contractor shall certify in writing that no materials used in the work contain lead or asbestos materials in 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 Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

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§ 16.2 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed work not in accordance with the Contract Documents shall not prevent the Architect or the Owner from insisting that the faulty work be corrected to conform with the Contract Documents and the Contractor shall correct same.

§ 16.3 The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

§ 16.4 The Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests, encumbrances, statutory or common law claims filed by the Contractor, suppliers, subcontractors, or anyone claiming by, through, or under the Contractor, suppliers or subcontractors for items covered by payments made by the Owner to Contractor.

§ 16.5 These general conditions include, by reference, the following documents:
Exhibit 1: Wage Rate Determination
Exhibit A: Contractor's Insurance and Bond Requirements
Exhibit B: Consultant Insurance Requirements
Exhibit C: Project Management Software
Exhibit D: Contractor's Invoice Checklist

OWNER *(Signature)*	***(Date)***	**CONTRACTOR** *(Signature)*	***(Date)***
« »		« »	
« »		« »	
Printed Name and Title		*Printed Name and Title*	

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