



**Request for Proposals (One-Step) for  
Construction Manager-at-Risk Services**

**RFP # 165.23:  
New Caney High School Athletic Projects and  
Career and Technical Education Projects  
resulting from the 2023 Bond Referendum**

**Issued by:**  
Teresa Fields  
Project Manager  
New Caney ISD  
22784 Hwy 59S Building E  
Porter, Texas 77365  
URL: [www.newcaneyisd.org](http://www.newcaneyisd.org)  
Email: [tfields2@newcaneyisd.org](mailto:tfields2@newcaneyisd.org)

**Submittal Deadline:**  
**July 11, 2023 @ 2:00 p.m.**

**SUBMISSION OF CONSTRUCTION MANAGER-AT-RISK:  
REQUEST FOR PROPOSALS (RFP) for the Construction of NCHS Athletic Projects and  
CTE Projects Resulting from the 2023 Bond Referendum**

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**TABLE OF CONTENTS**

- 1. RFP Schedule Summary**
- 2. Advertisement**
- 3. Projects' Scopes and Budgets**
- 4. Submission Instructions**
- 5. Architects**
- 6. Selection Process**
- 7. Award and Contract Approval**
- 8. Proposer Eligibility for Contract Award**
- 9. Insurance**
- 10. Payment and Performance Bonds**
- 11. Prevailing Wage Rates**
- 12. Reservations and Waivers**

**Appendix A: Guidelines for Pre-construction services provided to NCISD and its Architect**

**Appendix B: Construction Manager-At-Risk: Request for Proposals Questionnaire**

**Appendix C: AIA Document A133-2019 "Standard Form of Agreement between Owner and Construction Manager as Contractor Where the Basis of Payment is the Cost of the Work plus a Fee with a "Guaranteed Maximum Price;" Exhibit B Insurance and Bonds; and AIA Document A201-2017 General and Supplementary Conditions, all as modified by NCISD for these projects**

**Appendix D: Construction Manager-At-Risk: Request for Proposals attachments**

1. Attachment A – Proposal Form and Certification of Proposer
2. Attachment B – Proposer Certification Forms
3. Attachment C – Asbestos-Free Materials and Inspection
4. Attachment D – Acknowledgement of Final Completion Documents
5. NCISD Vendor Information Packet (to include form 1295)

## **1. RFP SCHEDULE SUMMARY**

June 21 & June 28, 2023	Legal Advertising for RFP
June 21, 2023	RFP documents released
July 06, 2023	Last day for inquiries and clarifications
July 11, 2023 (2 p.m.)	Receipt and Reading of Names of Offerors and fees and prices

Note: This schedule is preliminary and may be modified at the discretion of the Owner.

## **2. ADVERTISEMENT**

Pursuant to the provisions of the Texas Government Code Chapter 2269, Subchapter F, it is the intent of the New Caney Independent School District to select a Construction Manager At-Risk (CMAR), via a one-step Request for Proposals (RFP) process, for a 3-phase construction project:

- Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving
- Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving
- Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building

The RFP package is available on NCISD's website: <https://www.newcaneyisd.org/Page/130>. Questions regarding the RFP should be directed in writing via email to Teresa Fields – [tfields2@newcaneyisd.org](mailto:tfields2@newcaneyisd.org). Sealed responses marked "CMAR Request for Proposals" are due and will be publicly opened at 2:00 p.m. (Local Time) on July 11, 2023, at 22784 Hwy 59S Building E, Porter, Texas 77365. The selection committee will review submissions and rank them according to the criteria established for this process as published in the request for proposals package. Submittals received by hand delivery or mail after that time will be returned unopened.

New Caney Independent School District reserves the right to waive any informality or to reject any or all, CMAR Request for Proposals submittals.

## **3. PROJECT SCOPES & BUDGETS**

### **A. Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving**

- a. Location: 22555 Eagle Dr., New Caney, TX
- b. Municipality: Montgomery County
- c. Scope:
  - i. Baseball Field (Including bleachers and pressbox)
  - ii. Softball Field (Including bleachers and pressbox)
  - iii. Batting Cages
  - iv. Storage Building
  - v. Tennis Courts
  - vi. Paving
- d. Proposed Project Schedule: – 06/01/2023 – 01/06/2024
  - i. Estimated Start of Construction: 08/24/2023
- e. Estimated Construction Budget: \$5,000,000.00

### **B. Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving**

- a. Location: 22555 Eagle Dr., New Caney, TX
- b. Municipality: Montgomery County

- c. Scope:
  - i. Completion of site paving and concrete
  - ii. Construction of a new CTE facility
  - iii. Construction of a new field house to accommodate Baseball, Softball. Tennis, Golf, Public Restrooms, and Concessions.
- d. Proposed Project Schedule: Oct.2023-May.2025
  - i. Estimated Start of Construction: Oct. 17, 2023
- e. Estimated Construction Budget: \$26,983,096.00

**C. Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building**

- a. Location: 22555 Eagle Dr., New Caney, TX
- b. Municipality: Montgomery
- c. Scope:
  - i. See document
- d. Proposed Project Schedule: Oct.2023-June 2026
  - i. Estimated Start of Construction: May 2025
- e. Estimated Construction Budget: \$15,116,558.00

**4. SUBMISSION INSTRUCTIONS**

- A.** The documentation and attachments listed below are required to be included with the proposal. All forms must be completed and signed.
- 1. Complete information as requested in Appendix B, Construction Manager-At-Risk: Request for Proposals Questionnaire.
  - 2. Proof of Insurance – certificates of insurance of the types and amounts described in this procurement solicitation, including in Exhibit A and in Exhibit B to the AIA Document A133, Insurance and Bonds, as modified by NCISD (enclosed as Appendix C hereto)
  - 3. Letter of statement from a bonding company that the proposer is eligible to obtain both payment and performance bonds of the types described in this procurement solicitation
  - 4. Attachment A – Proposal Form and Certification of Proposer
  - 5. Attachment B – Proposer Certification Forms
  - 6. Attachment C – Asbestos-Free Materials and Inspection
  - 7. Attachment D – Acknowledgement of Final Completion Documents
  - 8. Attachment E – W-9 Form
  - 9. Attachment F – Ch. 22 Criminal History Records Contractor Certification: Contractor/Subcontractor Employees
  - 10. Attachment G - 1295

Offerors shall submit proposals to:

**Teresa Fields  
Project Manager  
New Caney ISD  
22784 Hwy 59S Building E  
Porter, Texas 77365**

**No later than 2:00 pm, July 11, 2023  
Late responses will not be considered.**

Proposers shall submit one original OR one (1) electronic copy of its proposal in a sealed envelope and labeled:

**CMAR Request for Proposals: For the Construction of New Caney High School Athletic Projects and CTE Projects resulting from the 2023 Bond Referendum**

- B. Complete and attach forms included in Appendix D.
- C. Any supplemental information provided should be submitted with original proposal.
- D. Pursuant to the provisions of Tex. Gov't Code Section 2269.253(f), the District's administrative staff shall publicly open, and read aloud, the names of the offerors and the fees and prices on or at 2 pm. on July 11, 2023 at 22784 Hwy 59S Building E, Porter, Texas 77365.
- E. Questions about the projects and Construction Manager-At-Risk: Requests for Proposals Questionnaire should be submitted in writing and addressed to:

Teresa Fields, NCISD Project Manager  
[tfields2@newcaneyisd.org](mailto:tfields2@newcaneyisd.org)

**Questions will be accepted through 4 p.m. on July 6, 2023.**

## **5. ARCHITECT**

### **VLK Architects**

20445 State Hwy 249  
Suite 350  
Houston, TX 77070  
Contact: Rayce Boyter

## **6. SELECTION PROCESS**

- a. The selection process for this project will be accomplished in a one-step process as provided in the Texas Government Code Chapter 2269, Subchapter F.
- b. The District will receive, publicly open, and read aloud the names of the offerors and the proposed prices and fees at 2 p.m. on July 11, 2023.
- c. In accordance with Sections 2269.254, 2269.055, and 2269.56 of the Texas Government Code and NCISD Policy CV (Local), NCISD will evaluate proposals on the basis of the following selection criteria and weights:

### **25% Estimated CM-at-Risk Cost (proposed fee x proposed construction budget plus general conditions) and Pre-Construction Services Fee**

Proposers will receive an assigned share of the total available points for this criterion based on the total monetary value of the Proposal according to banded point categories shown in the "Table of Awarded Points," below. A formula will be used as follows to determine the award band for proposals based on each proposer's percentage above the low bid: Percentage Above Low Bid=(Your combination of fees and general conditions/lowest proposed combination of fees and general conditions. The result of the formula will be used to proportion the points awarded based on the "Table of Awarded Points," below.

### **Personnel for this project**

- 15%** Proposer's individual personnel proposed for the work in the RFP demonstrate similar project experience by showing high proportion of Houston region/school district/governmental entity work, the proposer's experience, projects of comparable cost, complexity, and timeframe to the work in the RFP. Organizational approach to the project is clear. Owner will review and evaluate the answers to the Questionnaire found in Appendix A and resumes.

### **20% Construction Manager at Risk experience in the construction of K-12 schools and school facilities in the Houston construction market**

The Owner will consider the proposer's experience and the proposer's answers to the Questionnaire found in Appendix A, including, but not limited to, the record of past performance. Proposer's references will be reviewed and evaluated.

### **10% Previous experience with New Caney ISD**

The Owner will consider the proposer's prior experience with NCISD.

**10% Experience on similar projects within the past 5 years**

The Owner will consider the proposer's experience on similar projects of the size, scope, and budget of the 2 projects in this RFP.

**15% Quality of Services and Overall reputation for managing schedule, budget, scope changes and over reputation for punch list, close out, and warranty**

Proposer demonstrates consistent and average past and current workload to staff ratio, showing ability to adequately staff the work and company stability. Proposer shows no or limited past history of claims, suits, and failure to perform. Proposer shows ability to maintain cost with no cost increases. Proposer has a record of timely completion of work, compliance with laws, and warranty service. The Owner will consider the proposer's general reputation for the above-listed items and the proposer's knowledge, reliability, character, integrity, skill, and stability.

**5% Relationship with subcontractors**

The Owner will consider the proposer's general reputation and relationship with subcontractors.

**100%**

**Table of Awarded Points**

Percentage Above Low	Percentage of Available Points Allocated
0% to 0.0125%	100.00%
0.0126% to 0.25%	99.00%
0.26% to 0.51%	97.50%
0.52% to 0.77%	96.00%
0.78% to 1.03%	94.50%
1.04% to 1.29%	93.00%
1.3% to 1.55%	91.50%
1.56% to 1.81%	90.00%
1.82% to 2.07%	88.50%
2.08% to 2.33%	86.50%
2.34% to 2.59%	84.50%
2.6% to 2.85%	82.50%
2.86% to 3.11%	80.50%
3.12% to 3.37%	78.50%
3.38% to 3.63%	77.50%
3.64% to 3.89%	76.50%
3.9% to 4.15%	75.50%
4.16% to 4.41%	74.50%
4.42% to 4.67%	73.50%
4.68% to 4.93%	72.50%
4.94% to 5.19%	71.50%
5.2% to 5.45%	70.50%
5.46% to 5.71%	69.50%
5.72% to 5.97%	68.50%
5.98% to 6.23%	67.50%
6.24% to 6.49%	66.50%
6.5% to 6.75%	65.50%
6.76% to 7.01%	62.50%
7.02% to 7.27%	59.50%
7.28% to 7.53%	56.50%
7.54% to 7.79%	53.50%

7.8% to 8.05%	50.50%
8.06% to 8.31%	47.50%
8.32% to 8.57%	44.50%
8.58% to 8.83%	41.50%
8.84% to 9.09%	38.50%
9.1% to 9.35%	35.50%
9.36% to 9.61%	32.50%
9.62% to 9.87%	29.50%
9.88% to 10.13%	26.50%
10.14% to 10.24%	23.50%
10.25% to 11%	17.50%
11.01% to 12%	11.50%
12.01% to 13%	5.50%
13.01% to 100%	0.00%

The final selection of a Construction Manager-at-Risk for these projects will be based on the above-published selection criteria and ranking evaluation to determine the offeror that submits the proposal that offers the best value to the District. The District reserves the right to waive any informality and to reject or accept any or all Proposals. 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 District, 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.

7. **Award/Contract Approval:** Award of a contract, if any, will be made to the proposer who submits the proposal that offers the best value for NCISD, based on (a) the selection criteria in this request for proposals and the weighted value for those criteria listed in this procurement solicitation; and (b) NCISD's ranking evaluation. Tex. Gov't Code § 2269.254(a). NCISD must first attempt to negotiate a contract with the selected proposer. Tex. Gov't Code § 2269.254(b). If NCISD is unable to negotiate a satisfactory contract with the selected proposer, NCISD must, formally and in writing, end negotiations with that proposer and proceed to the next proposer in the order of the selection ranking until a contract is reached or negotiations with all ranked proposers end all proposals are rejected. Tex. Gov't Code § 2269.254(c).

This procurement, any award under this procurement, and the resulting contract, if any, is subject to approval by the New Caney ISD Board of Trustees. Subsequent to required approval, the only person authorized to commit NCISD contractually is the Superintendent or his designee. This solicitation is an invitation for sealed proposals and neither this solicitation nor the response or the proposal from any prospective proposer/contractor shall create a contractual relationship that would bind NCISD until such time as both NCISD and the selected proposer/contractor sign a legally binding contract, which includes, without limitation, the terms required by NCISD.

A response to this procurement solicitation is an offer to contract with the District based upon the terms, conditions, scope of work, and specifications contained in this procurement solicitation and the construction documents. A contract is not formed unless and until a proposal is accepted and awarded by NCISD after approval by the NCISD Board of Trustees. The contract between NCISD and the Construction Manager shall be the "Standard Form of Agreement between Owner and Construction Manager as Contractor Where the Basis of Payment is the Cost of the Work plus a Fee with a "Guaranteed Maximum Price," AIA Document A133-2019, as amended by NCISD for this Project, along with the AIA Document A201-2017 General and Supplementary Conditions, as modified by NCISD, and Exhibit B Insurance and Bonds Requirements to the A-133. NCISD's modifications to the AIA Documents are included herein as **Appendix C**. Any exceptions

to NCISD's modified AIA Contract Documents must be clearly indicated in the proposer's submitted proposal. Any exceptions to the modified AIA Contract Documents should be noted in the proposal along with suggested wording for each exception. The District 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 NCISD are unable to resolve any exceptions to the mutual satisfaction of both parties, NCISD 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 NCISD's modifications to the AIA Documents. In the event that a project is awarded to a Proposer and the Proposer requests changes to the Contract Documents, the District 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.

All savings on the project will be returned to the District at the conclusion of the project.

All actual cost information will be made available to the District or its agent during the entire process. A formal audit of the project may be conducted by an independent third party hired by the District at selected intervals during the construction phase and prior to final payment.

The District will contract separately for all material testing, environmental testing and services, test and air balance, commissioning, roof inspections and Texas Department of Licensing and Regulation (TDLR) inspections.

#### **8. Proposer Eligibility for Contract Award.**

In order for a proposer to be eligible to be awarded a contract, the proposal must be responsive to the solicitation and NCISD must be able to determine that the proposer is responsible to perform the resulting contract satisfactorily.

Responsive proposals are those that comply with all material aspects of the solicitation, conform to the Procurement Documents, and meet the requirements set forth in this solicitation. Proposals that do not comply with the terms and conditions of the solicitation will be rejected as non-responsive.

Each proposer shall complete, and submit with the proposal, the applicable forms contained in the solicitation. When a special license or permit is required by Federal, State or Local law or ordinance or required by a company or otherwise to perform the work, the proposer must be properly licensed prior to submitting a proposal to NCISD and must furnish evidence of such licensing or credentials with the proposal.

Responsible proposers, at a minimum, must meet all of the following requirements:

- Be an experienced contractor who has served as a prime contractor on similar construction projects for schools/governmental entities and be knowledgeable about requirements for new construction, including, without limitation, applicable building code requirements;
- Provide a warranty and support for any equipment installed as part of the construction services;
- Possess or is able to obtain adequate financial resources as required to perform under any contract resulting from this procurement solicitation;
- Have a responsible safety record;
- **Be able to obtain payment and performance bonds of the types and in the amounts described in this procurement solicitation;**
- **Comply with all prevailing wage rate requirements;**
  - The contractor who is awarded a contract resulting from this procurement solicitation must pay not less than the prevailing wage rates determined by NCISD to a worker employed by it in the execution of a contract and must keep a record of such, as detailed in this procurement solicitation.
- **Be able to obtain all required permits, licenses, etc.**
  - All permit costs, inspection costs by governmental authorities having jurisdiction and associated fees, including but not necessarily limited to, building permits, sprinkler permits, canopy permits,



fence permits, etc. will be paid by the selected proposer.

- Contractor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform the contract resulting from this procurement solicitation. Contractor must comply with all state and local building code requirements
- Submit all required proposal forms. If there are any missing proposal form pages, proposers may be disqualified.
- Be able to comply with the required performance schedule, taking into consideration all existing business commitments.
- Have necessary management and technical capability to perform any resulting contract;
- Be qualified as an established firm regularly engaged in the type of business to provide the items/work required by this solicitation;
- Be registered to do business in the State of Texas;
- Be in good standing with the State of Texas;
- Be otherwise qualified and eligible to receive a contract award under applicable laws and regulations.
- Proposals deviating or taking exceptions to the solicitation requirements may not be considered. A person is not eligible to be considered for award of this solicitation or any resulting contract or to be a subcontractor of the proposer or prime contractor if the person assisted in the development of this solicitation or any part of this solicitation or if the person participated in a project related to this solicitation when such participation would give the person special knowledge that would give that person or a prime contractor an unfair advantage over other proposers.

9. **Insurance.** Contractor must obtain and keep in effect during the term of the contract, insurance coverage in the below listed types and minimum amounts. As evidence of insurance coverage, **Contractor must furnish to NCISD certificate(s) of insurance as detailed in Exhibit B to the AIA Document A 133-2019.**

Type of Coverage	Amount of Coverage
Liability and other insurance	As detailed in Exhibit B to the AIA Document A133-2017, Insurance and Bonds, as modified by NCISD
Workers Compensation & Employers Liability Insurance	As detailed in Exhibit A hereto and Exhibit B to the AIA Document A133-2017, Insurance and Bonds, as modified by NCISD

Contractor must perform the duties and responsibilities pertaining to required workers' compensation coverages, as detailed in Exhibit A and in Exhibit B to the AIA Document A133, Insurance and Bonds, as modified by NCISD.

Contractor shall provide NCISD with a certificate of coverage for each person providing services on the project, prior to that person's beginning work on the project. This provision 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 contracts directly with the contractor and regardless of whether that person has employees. This includes, but is not limited to, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity furnishing persons to perform services on the contract. Services include, but are not limited to, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. Services do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

Contractor shall provide NCISD with a new certificate of coverage showing extension of coverage:

- (1) Before the end of the coverage period, if the contractor's current certificate shows that the coverage period ends during the duration of the project; and

- (2) No later than seven days after the expiration of the coverage for each other person providing services on the project whose current certificate shows that the coverage period ends during the duration of the project.

- 10. Performance and Payment Bonds.** The successful contractor, before beginning the work under any contract resulting from this procurement solicitation, is required to execute a performance bond and a payment bond as detailed herein and in Exhibit B to the AIA Document A133, Insurance and Bonds, as modified by NCISD (enclosed herein as Appendix C).

**Proposers must provide, with their proposals, a letter of statement from a bonding company that the proposer CMAR contractor is eligible to obtain both payment and performance bonds of the types described in this procurement solicitation.**

Payment and performance bonds must be in an amount equal to the construction budget, as specified in this RFP, in accordance with Tex. Gov't Code Section 2269.258(a). Payment and performance bonds shall be provided no later than the 10<sup>th</sup> day after the date the Construction Manager-At-Risk executes the contract.

- 11. Prevailing Wage Rates.** A worker, laborer, or mechanic employed on a public work by or on behalf of NCISD 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.

The NCISD Board has determined the general prevailing rate of per diem wages in the locality in which the public work is to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work. Attached hereto as Exhibit B are the prevailing wage rates adopted by the NCISD Board.

The contractor who is awarded a public works contract by NCISD or a subcontractor of the contractor shall pay not less than the prevailing wage rates determined by NCISD to a worker employed by it in the execution of the public works contract. A contractor or subcontractor who violates the requirement to pay prevailing wage rates shall pay to NCISD, \$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 public works contract; NCISD shall specify this penalty in the public works contract.

**Obligation to keep Prevailing Wage Rates Records.** A contractor and subcontractor employed on an NCISD public works contract shall keep a record showing:

- (1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and
- (2) the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by NCISD officers and agents. Tex. Gov't Code § 2258.024.

- 12. Reservations and Waivers:** This procurement solicitation shall be in accordance with applicable law and District policies and general terms, including the following:
  - a. This Request for Proposals does not obligate District to award a contract or pay any costs incurred by the proposer in the preparation and submittal of a proposal. The District assumes no financial responsibility for any costs incurred by proposers in developing and submitting a proposal, participating in pre-bid meetings, or any other costs incurred by proposers in connection with this procurement solicitation.
  - b. **THE DISTRICT, IN ITS SOLE DISCRETION, RESERVES THE RIGHT TO ACCEPT ANY PROPOSAL AND/OR REJECT ANY AND ALL PROPOSALS OR A PART OF A PROPOSAL, WITHOUT REASON OR CAUSE, SUBMITTED IN RESPONSE TO THIS SOLICITATION.**
  - c. **THE DISTRICT RESERVES THE RIGHT TO REJECT ANY NON-RESPONSIVE OR CONDITIONAL PROPOSAL.**

- d. **THE DISTRICT RESERVES THE RIGHT TO WAIVE ANY FORMALITIES, IRREGULARITIES, AND/OR TECHNICALITIES IN THIS SOLICITATION, THE CONSTRUCTION AND/OR PROCUREMENT DOCUMENTS, AND/OR ANY PROPOSALS RECEIVED OR SUBMITTED.**
  - e. **BY SUBMITTING A PROPOSAL, PROPOSER AGREES TO WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE DISTRICT AND/OR ITS BOARD MEMBERS, ADMINISTRATORS, EMPLOYEES, AND/OR AGENTS ARISING OUT OF OR IN CONNECTION WITH (1) THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY PROPOSAL; (2) ANY REQUIREMENTS UNDER THE SOLICITATION, PROCUREMENT PACKAGE, OR RELATED DOCUMENTS; (3) THE REJECTION OF ANY PROPOSAL OR ANY PART OF ANY PROPOSAL; AND/OR (4) THE AWARD OF A CONTRACT, IF ANY.**
  - f. The District reserves the right to withdraw/cancel this solicitation at any time for any reason, remove any scope component for any reason and to issue such clarifications, modifications and/or amendments as deemed appropriate by NCISD, in its sole discretion.
  - g. A proposal that has been submitted to NCISD may be withdrawn prior to the deadline for submission of proposals.
  - h. Proposals received will become a part of the District's official files without further obligation to the respondents.
  - i. Offerors shall not, under penalty of law, offer any gratuities, favors, or anything of monetary value to any officer or employee of NCISD, or to any consultant, employee, or member of NCISD for the purpose of or having the effect of influencing favorable disposition toward their own proposal or any other proposal submitted hereunder.
  - j. No employee, officer, or member of NCISD shall participate in the selection, development of a response to this procurement solicitation, award or administration of a contract resulting from this procurement solicitation if a conflict of interest, real or apparent, would be involved.
  - k. Proposers shall not engage in any activity that will restrict or eliminate competition. This does not preclude joint ventures or subcontracts.
  - l. Any Proposer who submitted a proposal may appeal NCISD's award, if the appeal is based on deviations from laws, rules, regulations, or NCISD Board policies. NCISD Board Policy GF (Local) applies to any Proposer wishing to appeal a proposal and/or award of a contract. In accordance with Policy GF (Local), a Proposer shall submit a complaint/appeal form by hand-delivery, fax, or U.S. mail, to NCISD's Facility Planning and Construction Manager. Complaints/appeals must be received by the close of business on or before the 15<sup>th</sup> NCISD business day after award of the contract. In the event Proposer is unsure about the award of the contract, it is the Proposer's responsibility to contact NCISD on the next business day after the award is announced and verify details concerning the award.
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**Appendix A: Guidelines for Pre-construction services provided to NCISD and its Architect:**

- A. The Project Manager and the estimator shall attend and actively participate in regular design meetings with the District and Architect to review project status and review and update the construction cost estimate.
- B. Advise the District and Architect regarding site use and improvements, phasing of the various projects, selection of materials, building systems and equipment.
- C. Provide recommendations on construction feasibility including estimates of alternative designs or materials, preliminary budgets, phasing and possible economies.
- D. The CM-At-Risk will be accountable for the construction budget from the schematic design phase through the completion of the project.
  - 1. Prepare, and periodically update, a preliminary Project schedule based upon District established milestones for the Architect's and the District's review.
  - 2. The Construction Manager shall coordinate and integrate the preliminary Program/Project schedule with the services and activities of the District, Architect and Construction Manager. As design progresses, the preliminary Program/Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, and submittal of the Guaranteed Maximum Price proposal.
- E. Construction Manager shall monitor changes from schematic design, to design development, and Construction Documents; and advise the District and Architect of their cost impact as they occur.
- F. During the preparation of the Construction Documents, the Construction Manager shall update and refine the cost estimate at established milestones, i.e., 75%. The CM shall do this with input from Subcontractors and their other resources, as necessary to provide accurate and reliable estimates.
- G. At each project development milestone, from Schematic Design to Construction Documents, each estimate shall be in a format that allows comparison from one milestone to the next.
- H. If any estimate submitted to the District exceeds previously approved estimates the Construction Manager shall make recommendations to the District and Architect to reduce the cost of the project within seven (7) days. The CM shall identify greatest contributors to estimate overages.
- I. The Construction Manager shall recommend to the District and Architect a schedule for procurement of long-lead time items that will constitute part of the Work as required to meet the Project schedule.
- J. The construction manager may be required to provide a GMP at 75% or 90% completed Construction Documents which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee and General Conditions.
- K. The CM shall solicit Competitive Sealed Proposals from subcontractors as outlined in Texas Government Code Chapter 2269.255, and shall:
  - 1. Receive at least three (3) proposals from qualified subcontractors and suppliers for performance of all major elements of work.
  - 2. If the CM is self-performing any work, their proposal shall be received by New Caney ISD 24 hours prior to the competitive sealed proposals for the GMP. These proposal(s) shall be submitted in a sealed envelope.
  - 3. Distribute proposal packages and confirm scope of work.
  - 4. Review proposals with District and Architect, prior to Contract Award, per Texas Government Code Chapter 2269.256.
  - 5. Provide copy of all subcontractor bids to District and Architect.

## **Appendix B**

### **Construction Manager-At-Risk: Request for Proposals 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.

#### **1. Firm Information**

- 1.1. Name of Firm:
- 1.2. Address of Principal Office
- 1.3. Phone and Fax:
- 1.4. Form of Business Organization (corporation, partnership, individual, joint venture, other?)
- 1.5. Year Founded:
- 1.6. Primary Individual to Contact:

#### **2. Organization**

- 2.1. How many years has your organization been in business in its current capacity?
- 2.2. How many years has your organization been in business under its present name? Under what other or former names has your organization operated?
- 2.3. 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.
  - 2.3.1. If your organization is a partnership, answer the following: Date of organization, Type of partnership (if applicable), and Name(s) of general partner(s).
  - 2.3.2. If your organization is individually owned, answer the following: Date of organization, Name of owner.
  - 2.3.3. If the form of your organization is other than those listed above, describe it and name the principals.
- 2.4. What is the annual dollar value of work done in the Houston area for the five-year period of 2017-2021, and what percentage of your total work does this represent?
- 2.5. What percentage of your work in the last five years has been K-12 school construction?

#### **3. Experience**

- 3.1. Completed Work within the last five years: List up to the last ten (10) school projects of similar scope constructed by your organization; For each project, provide the name, nature of the project/function of the building, construction delivery method, size (SF), location, cost, contractual completion date, actual completion date, owner and architect (and their phone numbers). **Please limit this section to fifteen (15) total pages.**
- 3.2. Current Work: List up to ten (10) school facility projects currently under construction by your organization, particularly in the Houston area; For each project, provide the name, nature of the project/function of the building, project delivery method, size (SF), location, cost, contractual completion date, actual completion date, owner and architect (and their phone numbers).
- 3.3. Using one or more of the projects listed in 3.1 and 3.2 as examples, describe the pre-construction services provided and the benefits to the Owner from using your organization as their Construction Manager. Please limit response to two (2) pages.
- 3.4. 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?
- 3.5. List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.
- 3.6. Claims and suits (If the answer to any of the questions below is yes, please provide details).
  - 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 five years?
- 3.7. Within the last five years, 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? (If the answer is yes, please provide details.)
- 3.8. Describe your organization's safety program and provide your worker's compensation experience modification factor. List any safety awards your company has received within the past 5 years.

#### **4. Financial Information**

- 4.1. 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).
- 4.2. Name and address of firm preparing attached financial statement and date thereof.
- 4.3. Is the attached financial statement for the identical organization named under item 4.1 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent subsidiary).
- 4.4. Will the organization whose financial statement is attached act as guarantor of the contract for construction?
- 4.5. Provide name, address and phone number of your financial institution.
- 4.6. Surety: Name of bonding company and name address, and phone number of agent.
- 4.7. A statement showing your firm's total bonding capacity as well as the firm's current available bonding capacity.
- 4.8. Your firm's insurance certificate showing coverage limits for commercial general liability, automobile, workers compensation, and umbrella policies.

#### **5. Experience with concepts for working as a Construction Manager-At-Risk**

- 5.1. Describe your organization's concepts for working in a team/integrated relationship with the Owner and Architect during the design and construction of major projects.
  - a. Estimating: Describe your organization's methods for estimating costs. It is anticipated that a portion of the GMP may be furnished prior to completion of construction documents. Describe your past success in this area. Provide a list of CM at Risk projects (referencing projects you noted items 3.1 and 3.2 when possible) indicating at what percentage a GMP was submitted to the Owner.
  - b. Scheduling: describe your organization's methods for scheduling during the design documents phase and the construction phase.
- 5.2. Cost Information: Your firm would be required to make all cost information available to owner and architect during design and construction. Describe how this information would be furnished and how the owner and architect would be assured that it is complete and accurate.
- 5.3. Describe your organization's experience with working with the Owner and Architect on a complex, phased project with similar size and scope.

## 6. Personnel

- 6.1. Given the scope and schedule of the project(s), identify the available personnel proposed (i.e., Project Manager, Job Superintendent or Superintendent(s), Estimator and Field Operations) to work on the project(s). Provide a resume and references for each individual. Prior to contracting with a construction management firm, New Caney Independent School District will interview the Project Manager/Job Superintendent that will be assigned to the project. Please reference these personnel to projects listed in items 3.1 and 3.2 and explain how these personnel align with the proposed projects.
- 6.2. Company Philosophy:
  - a. What do you bring to the project team (NCISD, Architect and CM) that is unique?
  - b. What is your role in ensuring that the Architect, Owner and Construction Manager work as a team? How will you resolve team conflict?

## 7. References (Name, organization, telephone, fax, & e-mail – if available)

- 7.1. Provide five (5) owner/client references
- 7.2. Provide five (5) subcontractor references
- 7.3. Provide five (5) architect (other than VLK Architects)/engineer/consultant references

## 8. General Conditions

The following items will be considered as general conditions of the contract and will not be included as part of the Construction Managers' fee. The cost of these general conditions will be submitted independently of the fee. The cost of these items will be reviewed, negotiated, and agreed upon before the GMP is approved, and itemized on each payment application as necessary to fully document. In addition to the below, minor work that may be included in the general conditions as allowed by Texas Government Code § 2269.255 is also included as general conditions.

Project Executive	Mobilization / Demobilization
Senior Project Manager/Project Manager	Temp Electric/Gas/Water Bill
Vehicle &/or Allowance/Mileage for all personnel	Office Supplies and equipment
	Telephone, Fax, Computer, Copier Costs
General Superintendent(s)	Ice, Cups & Water
Superintendent including Vehicle &/or Allowance/Mileage	Field office & furnishings, inc. on-site sanitary facilities
Assistant Superintendent(s)	Delivery Service/Postage
Project / Cost Engineer	Shop Drawings (including printing)
Estimating	Advertising for Subcontractors and suppliers
Office/Technology Engineer	Stationery and Supplies
Project Expediter / Asst. PM	Temporary Fencing
Field Office Manager/Secretary	Temporary Weather Protection
Field Engineering/Layout	Temporary Partitions
Accounting	Temporary Roads
Secretary/Admin. Personnel (including on-site)	Temporary Plumbing
Quality Control Manager	Plans/Surveys/Blue Prints
General Purpose Labor	Field Communications System:
Subsistence/Per Diem	Chemical Toilets
Payroll Taxes on General Conditions	Cellular Telephones/Pagers
Labor Burden	Phones, Radios

CPM Schedule  
Field Engineering & Equipment  
As Builts (including electronic files)  
CM Office Trailers  
Architect/Owner Trailer  
CM Storage Sheds  
CM Job Office Expense  
CM Job Office Equipment  
First Aid Supplies  
Watchman/Security  
Project Documentation  
Small Tools  
Building Permits/Fees/Licenses/Dues  
Equipment Rental, Maint. & Insurance  
Signage/Advertising  
Monthly aerial photos/progress photos

Generators – portable  
Barricades  
Gas, Oil & Grease  
Vehicle Repair  
Clean Streets  
Cleanup Periodical  
Continuous Jobsite Clean-up  
Dumpsters/Trash Haul  
Final Cleaning  
Building and Site dewatering  
First Aid/Safety Equipment  
Safety Coordinator  
Job Safety Training  
Fire Protection/Fire Extinguishers Job  
Drug testing  
General Liability and/or Builders Risk  
Insurance



***Appendix C – AIA Documents A133-2019, Exhibit B to the AIA Document A133,  
Insurance and Bonds; A201-2017 (Exhibit C to the A133), all as amended by  
NCISD***

**See Separate Appendix C, attached.**

***Appendix D – Construction Manager-At-Risk: Request for Proposals attachments***

1. Attachment A – Proposal Form and Certification of Proposer
2. Attachment B – Proposer Certification Forms
3. Attachment C – Asbestos-Free Materials and Inspection
4. Attachment D – Acknowledgement of Final Completion Documents
5. NCISD Vendor Information Packet (to include form 1295)

**ATTACHMENT A: PROPOSAL FORM: NEW CANEY ISD'S NEW CANEY HIGH SCHOOL ATHLETIC PROJECTS AND CTE PROJECTS; RFP JOB NUMBER #165.23**

Name of Proposer/Contractor: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Receipt of Addenda: \_\_\_\_\_

**Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving:**

1	<b>Total Proposal Amount for Pre-Construction Services Not-to-Exceed Lump Sum (with attachment showing breakdown of costs)</b>	_____ amount written (this governs)	\$ _____
2	<b>Total Proposal Amount for CMAR Fee, Percentage of the Cost of the Work</b>	_____ amount written (this governs)	% _____
3	<b>Total Proposal Amount for General Conditions Not-to-Exceed Lump Sum</b>	_____ amount written (this governs)	\$ _____

**Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving:**

1	<b>Total Proposal Amount for Pre-Construction Services Not-to-Exceed Lump Sum (with attachment showing breakdown of costs)</b>	_____ amount written (this governs)	\$ _____
2	<b>Total Proposal Amount for CMAR Fee, Percentage of the Cost of the Work</b>	_____ amount written (this governs)	% _____
3	<b>Total Proposal Amount for General Conditions Not-to-Exceed Lump Sum</b>	_____ amount written (this governs)	\$ _____

**Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building**

1	<b>Total Proposal Amount for Pre-Construction Services Not-to-Exceed Lump Sum (with attachment showing breakdown of costs)</b>	_____ amount written (this governs)	\$ _____
2	<b>Total Proposal Amount for CMAR Fee, Percentage of the Cost of</b>	_____ amount written (this governs)	% _____

	<b>the Work</b>		
3	<b>Total Proposal Amount for General Conditions Not-to-Exceed Lump Sum</b>	_____ amount written (this governs)	\$_____

The undersigned hereby proposes to furnish all labor, materials, supervision and any other services necessary to complete the above-referenced projects for the proposal amount(s) listed. **Proposal prices are firm for acceptance by NCISD for 60 days from the date opening of proposals has occurred.**

Signed By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

SEAL: (If Corporation)

### **CERTIFICATION OF PROPOSER**

The undersigned Proposer has carefully examined all instructions, requirements, specifications, terms and conditions of this procurement solicitation and the construction documents and certifies:

1. It is a reputable company regularly engaged in providing construction services necessary to meet the requirements, specifications, terms and conditions of the procurement solicitation.
2. The Proposer has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Proposer's personal observations with the requirements of the proposed Contract Documents.
3. It has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the requirements, specifications, terms and conditions of this procurement solicitation. Further, if awarded, the Proposer agrees to perform the requirements, specifications, terms and conditions of this procurement solicitation and to obtain final completion for the entire project on or before 12/29/2024.
4. Proposer proposes to furnish all labor, materials, supervision and any other services necessary to complete the project for the proposal amount(s) listed on Attachment A. The undersigned certifies that the amount(s) contained in Attachment A have been carefully checked and are submitted as correct and final.
5. All statements, information, and representations prepared and submitted in response to this procurement solicitation are current, complete, true, and accurate. Proposer acknowledges that NCISD will rely on such statements, information, and representations in selecting the successful proposer. Proposer shall be bound by all statements, representations, warranties, and guarantees made in its proposal.
6. It is not currently barred or suspended from doing business with the Federal government, any of the members represented, or any of their respective agencies.
7. That all of the requirements of this procurement solicitation have been read and understood, including any amendments/addenda. In addition, compliance with all requirements, terms and conditions will be assumed by NCISD if not otherwise noted in the proposal.
8. The individual signing below has authority to submit this proposal on behalf of Proposer.

<b>PROJECT TITLE:</b>	<b>New Caney ISD's New Caney High School Athletic Projects and CTE Projects</b>		
<b>PROPOSER NAME:</b>			
<b>AUTHORIZED SIGNATURE:</b>			
<b>PRINT NAME:</b>			
<b>TITLE:</b>			
<b>DATE:</b>			
<b>ADDRESS:</b>			
<b>CITY, STATE, ZIP CODE:</b>			
<b>PHONE:</b>		<b>FAX:</b>	
<b>EMAIL ADDRESS:</b>			
<b>WEBSITE URL:</b>			

## **CONFIDENTIALITY DECLARATION FORM**

### **INFORMATION SUBMITTED TO NCISD IN CONNECTION WITH THIS PROCUREMENT SOLICITATION OR THE AGREEMENT IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552**

As a governmental body, NCISD is subject to the Texas Public Information Act found in Chapter 552, Texas Government Code. Proposals and other information submitted to NCISD in connection with this procurement solicitation or the Agreement may be subject to release as public information. If a Vendor believes that part(s) of its proposal or any other information submitted by Vendor to NCISD in connection with this procurement solicitation or the Agreement contain confidential, proprietary, and/or trade secret information or otherwise may be excepted from disclosure under Texas law, the Vendor must clearly and conspicuously mark the applicable information as “CONFIDENTIAL.”

Marking information as “CONFIDENTIAL” does not guarantee that the information will be withheld from disclosure. If NCISD receives a request for public information involving information that Vendor has clearly and conspicuously marked as “CONFIDENTIAL,” NCISD will respond pursuant to Chapter 552, Texas Government Code, which may or may not require that NCISD provide notice of the request to Vendor. Vendor understands and agrees that it is solely responsible for submitting to the Attorney General of Texas each reason why the requested information should be withheld and a letter, memorandum, or brief in support of that reason. NCISD assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by Vendors, and **Vendor hereby waives any claim against and releases from liability NCISD, its respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in connection with this procurement solicitation or the Agreement or otherwise created, assembled, maintained, or held by Vendor or NCISD and determined by NCISD, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.** Further, even if Vendor marks information as “CONFIDENTIAL,” **Vendor expressly agrees that NCISD may disclose Vendor’s proposal, including, but not limited to, pricing information, to other governmental entities.**

Please check **ONLY ONE** of the following options:

- ☐ **Declaration of Confidentiality** – Vendor **HAS** clearly and conspicuously marked information contained in its proposal and/or other information submitted by Vendor to NCISD in connection with this procurement solicitation or the Agreement as “CONFIDENTIAL.” Vendor declares that the information marked by Vendor as “CONFIDENTIAL” contains confidential, proprietary, and/or trade secret information and is excepted from disclosure under Chapter 552, Texas Government Code.
- ☐ **Waiver of Confidentiality** – Vendor **HAS NOT** marked any information contained in its proposal and/or other information submitted by Vendor to NCISD in connection with this procurement solicitation or the Agreement as “CONFIDENTIAL.” Vendor certifies that it has not submitted any confidential, proprietary, and/or trade secret information to NCISD and that its proposal and all other information—including any pricing information—submitted by Vendor to NCISD in connection with this procurement solicitation or the Agreement is subject to disclosure under Chapter 552, Texas Government Code. Vendor hereby expressly waives any claim of confidentiality with respect to its proposal and/or any other information—including any pricing information—submitted by Vendor to NCISD in connection with this procurement solicitation or the Agreement.

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Printed Name of Authorized Officer/Representative of Vendor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **ATTACHMENT C – ASBESTOS-FREE MATERIALS AND INSPECTION**

If awarded the project, the Contractor shall be responsible for ensuring that no asbestos containing building materials are used in the construction. The Contractor shall take whatever measures it deems necessary to ensure that all employees, suppliers, fabricators, and subcontractors, comply with this requirement.

At Final Completion the Contractor shall provide a certification letter certifying that the work does not contain asbestos containing building materials.

I hereby certify that I have read, understood and agree to the terms mentioned in this document.

Signature: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT D – ACKNOWLEDGEMENT OF FINAL COMPLETION DOCUMENTS

If awarded this project, the General Contractor shall provide the following items at the project's final completion stage. The retainage shall not be released until all of the items have been fulfilled.

1. Completion of all discrepancies (punch list items) noted at the time of Substantial Completion
2. Submission of record drawings and specifications, and other record documents as required by contract documents.
3. Completion of all Owner training
4. Submission of all contractually-required attic stock and spare parts
5. Submission of all final Operation & Maintenance documents and other closeout deliverables
6. Submission of consent of surety to release retainage and final payment application.
7. Submission and approval of all remaining change order proposals, claims, and applications for payment
8. Payment of all costs incurred for equipment, material, labor and services against the Project
9. Submission of Asbestos Free Materials certification letter and certifications for lead and PCB's.
10. No liens have been attached against the project
11. No suits are pending by reason of Work on the Project Under the Contract for Construction
12. All workers' compensation claims are covered by Workers' Compensation Insurance as required by law
13. All insurance required of the Contractor beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the owner
14. All public liability claims are adequately covered by insurance and that the builder shall save, protect, defend, indemnify, and hold the Owner harmless from and against any and all claims which arise as direct or indirect result of any transaction, event occurrence, or omission related to performance of the work completed under said Contract for Construction
15. All Work and Material Warranties Provided.
16. Unconditional Final Payment Release and Waiver Document Provided.
17. All inspections by governmental authorities having jurisdiction over the project must have been finalized and any remedial work required by those authorities must also be completed.
18. Certificate of Occupancy Provided.

I hereby certify that I have acknowledged and agree to provide the items listed in this document during the final completion stage if I were to be awarded with this project.

Signature: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_



## ***Exhibit A – NCISD’s Required Workers’ Compensation Insurance Coverages***

NCISD shall use the following language for bid specifications and contracts for building or construction, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project is required for the duration of the project.

Duration of the project includes the time from the beginning of the work on the project until the contractor’s/person’s work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project (“subcontractor” in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that 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 do not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the contractor providing services on the project for the duration of the project.

The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the 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.

The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1. A certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
2. No later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The contractor shall post on each project site a notice, in the text, form, and manner prescribed by the TDI, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the project for the duration of the project;
2. Provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the project;
3. Provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

4. Obtain from each other person with whom it contracts, and provide to the contractor:
  - a. A certificate of coverage, prior to the other person beginning work on the project; and
  - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
5. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
6. Notify the governmental entity in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
7. Contractually require each person with whom it contracts to perform as required by items 1–6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The contractor's failure to comply with any of these provisions is a breach of contract by the contractor that entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

***Exhibit B – 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:  
take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and
- (1) 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.

**Prevailing Wage Rates – School Construction Trades**

June 1, 2022 – Texas Gulf Coast Area

<b>CLASSIFICATION</b>	<b>2022 HOURLY RATE</b>
ASBESTOS WORKER	\$21.13
BRICKLAYER; MASON	\$25.32
CARPENTER; CASEWORKER	\$23.38
CARPET LAYER; FLOOR INSTALLER	\$25.12
CONCRETE FINISHER	\$23.40
DATA COMM/TELE COMM	\$23.50
DRYWALL INSTALLER; CEILING INSTALLER	\$26.65
ELECTRICIAN	\$25.93
ELEVATOR MECHANIC	\$28.80
FIREPROOFING INSTALLER	\$22.25
GLAZIER	\$22.30
HEAVY EQUIPMENT OPERATOR	\$22.40
INSULATOR	\$20.50
IRONWORKER	\$25.50
LABORER, HELPER	\$16.71
LATHERER; PLASTERER	\$23.25
LIGHT EQUIPMENT OPERATOR	\$20.50
METAL BUILDING ASSEMBLER	\$21.10
MILLWRIGHT	\$33.63
PAINTER; WALL COVERING INSTALLER	\$19.60
PIPEFITTER	\$26.97
PLUMBER	\$26.71
ROOFER	\$20.50
SHEET METAL WORKER	\$19.90
SPRINKLER FITTER	\$26.13
STEEL ERECTOR	\$23.25
TERRAZZO WORKER	\$23.50
TILE SETTER	\$19.58
WATERPROOFER; CAULKER	\$19.88

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

**Prevailing Wage Rates – Worker Classification Definition Sheet**

<b>CLASSIFICATION</b>	<b>DEFINITION</b>
ASBESTOS WORKER	Worker who removes and disposes of asbestos materials.
BRICKLAYER; MASON	Craftsman who works with masonry products, stone, brick, block, or any material substituting those materials and accessories.
CARPENTER; CASEWORKER	Worker who build wood structures or structures of any material which has replaces wood. Includes rough and 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/TELE COMM	Worker who installs data/telephone and television cable and associate equipment and accessories.
DRYWALL; CEILING INSTALLER	Worker who installs metal framed walls and ceiling, drywall coverings, ceiling grids, and ceilings.
ELECTRICIAN	Skilled craftsman who installs or repairs electrical wiring and devices. Includes fire alarm systems and HVAC electrical controls.
ELEVATOR MECHANIC	Craftsman skilled in the installation and maintenance of elevators.
FIREPROOFING 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-hoes, back-fillers, power operated shovels, winch trucks, and all trenching machines.
INSULATOR	Worker who applies, sprays, or installs insulation.
IRONWORKER	Skilled craftsman who erects structural steel framing, and installs structural concrete Rebar.
LABORER, HELPER	Worker qualified for only unskilled or semi-skilled work. Lifting, carrying materials or tools, hauling, digging, clean up.
LATHERER; PLASTERER	Worker who installs metal framing and lath. Worker who applies plaster to lathing and installs associated accessories.
LIGHT EQUIPMENT OPERATOR	Includes but not limited to , air compressors, truck crane drivers, flex planes, building elevators, form graders, concrete mixers less than 14cf), conveyers.
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, and align pumps.
PAINTER; WALL COVERING INSTALLER	Worker who prepares wall surfaces and applies paint and/or wall coverings, tape, and bedding.
PIPEFITTER	Trained worker who installs piping systems, chilled water piping and hot water (boiler) piping, pneumatic tubing controls, chillers, boilers, and associated mechanical equipment.
PLUMBER	Skilled craftsman who installs domestic hot and cold water piping, waste piping, storm system piping, water closets, sinks, urinals, and related work.
ROOFER	Worker who installs roofing materials, Bitumen (asphalt and coal tar) felts, flashings, all types of roofing membranes, and associated products.
SHEET METAL WORKER	Worker who installs sheet metal products, Roof metal, flashings and curbs, ductwork, mechanical equipment, and associated metals.
SPRINKLER FITTER	Worker who installs fire sprinklers systems and fire protectant equipment.
STEEL ERECTOR	Worker who erects and dismantles structural steel frames of buildings and other structures.
TERRAZZO WORKER	Craftsman who places and finishes Terrazzo
TILE SETTER	Worker who prepares wall and/or floor surfaces and applies ceramic tiles to these surfaces.
WATERPROOFER; CAULKER	Worker who applies water proofing material to buildings. Products include sealant, caulk, sheet membranes, and liquid membranes, sprayed, rolled or brushed.

# DRAFT AIA® Document A133™ – 2019

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

**AGREEMENT** made as of the «[TBD]» day of «[TBD]» in the year «2023»  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:

(Name, legal status, address, and other information)

«New Caney Independent School District»  
22784 Hwy 59 S  
Building “E”  
Porter, Texas 77365 »« »

and the Construction Manager:

(Name, legal status, address, and other information)

«[TBD]»

« »

« »

« »

for the following Project:

(Name, location, and detailed description)

«Owner’s three-phase New Caney High School Athletic Projects and Career and Technical Education Projects:  
Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving  
Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving  
Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building

The Architect:

(Name, legal status, address, and other information)

VLK Architects  
20445 TX-249  
Suite 350  
Houston, TX 77070

The Owner and Construction Manager 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.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT EXHIBIT B INSURANCE AND BONDS

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

#### Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving

- Clear and grub entire site
- Install all site utilities and detention ponds
- Construction of a New Caney High School Competition Baseball & Softball Complex including Turf Fields, Covered Batting Cages, Storage, Bleachers and eight (8) Tennis Courts with concrete and paving.

#### Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving

- Completion of site paving and concrete
- Construction of a New Caney High School Career & Technology (CTE) Facility.
- Construction of a New Caney High School Baseball/Softball/Tennis/Golf Fieldhouse with rest rooms

#### Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building

- Demo of existing structures
- Construction of New Caney High School JV Football/Track & Field.
- Construction of New Caney High School Football/Track/Soccer Fieldhouse.
- Construction of a New Caney High School Covered Multipurpose Turf Practice area and a Natural Turf Practice Field.

§ 1.1.2 The Project's physical characteristics:

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

«[TBD] »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6, is referred to as the Total Project Cost and/or Owner's budget throughout this Agreement and consists of the Cost of the Work as defined in Article 7.1.1 plus the Construction Manager's Fee as described in Article 6.1.2:

*(Provide total and, if known, a line item breakdown.)*

«[TBD] »

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

.1 Design phase milestone dates, if any:

«Phase 1:

Completion of Construction Documents by August 1, 2023

Award of GMP by August 21, 2023

Start of Construction by May 22, 2023

Substantial Completion by January 5, 2024

Phase 2:

Completion of Construction Documents by August 21, 2023

Award of GMP by August 21, 2023

Start of Construction by September 11, 2023

Substantial Completion by June 28, 2024

Phase 3:

Completion of Construction Documents by August 21, 2023

Award of GMP by January 20, 2025

Start of Construction by January 27, 2025

Substantial Completion by April 6, 2026

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

*(Identify any requirements for fast-track scheduling or phased construction.)*

The only fast track Phase is Phase I for the Baseball, Softball, Batting Cages, Tennis Courts, Press Boxes, Paving.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

None.

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



§ 1.1.7 Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere.)*

None

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

*(List name, address, and other contact information.)*

Matthew Calvert  
Superintendent  
New Caney Independent School District  
21580 Loop 494  
New Caney, Texas 77357

«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.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

*(List name, address and other contact information.)*

«The persons or entities may include, but are not limited to:

- .1 Texas Department of Licensing and Regulation (TDLR);
- .2 Texas Commission Environmental Quality (TCEQ), if required;
- .3 Texas Education Agency;
- .4 City Plan Review and Building Department;
- .5 Planning and Zoning Authority;
- .6 Municipal and/or County Fire Marshal;
- .7 Municipal and/or County Health Department »

§ 1.1.10 The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

- .1 Materials testing engineer;
- .2 Hardware specifier consultant;
- .3 Testing and balancing firm;
- .4 Asbestos and environmental engineer;
- .5 Commissioning firm;
- .6 Geotechnical Engineer;
- .7 Surveyor (unless otherwise to be provided as detailed herein);
- .8 Traffic Engineer;
- .9 Platting Services

The above consultants are to be determined by the Owner, in Owner's sole discretion, to be compensated directly by the Owner where appropriate.

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

VLK Architects  
20445 TX-249  
Suite 350  
Houston, TX 77070

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

«[TBD] »  
« »  
« »  
« »  
« »  
« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1:  
(List any Owner-specific requirements to be included in the staffing plan.)

«[TBD] »

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

«In accordance with the Agreement and applicable law, including Texas Government Code Subchapter F. »

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

«None. »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price/Total Project Cost and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

**§ 2.1.1** Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

**§ 2.1.2** The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract., unless the Board has delegated such authority. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Superintendent Matthew Calvert, or successor.

## **§ 2.2 Relationship of the Parties**

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

## **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction as amended for the Project, shall apply as follows: Section 1.5, Ownership and Use of Drawings, Specifications, and Other Instruments of Service; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Models Use and Reliance; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials and Substances; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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

**§ 2.3.3** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, General Conditions of the Contract for Construction as amended for the Project, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

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

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and Total Project Cost, each in terms of the other. In addition to and in accordance with any requirements set forth in Sections 3.1 and 3.2, Construction Manager agrees to provide pre-construction services as described in the Owner's solicitation documents for the Project.

#### § 3.1.3 Consultation

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 The Construction Manager shall review the Contract Documents, including, but not limited to during the Preconstruction Phase, to the best of their ability and within the confines of the completeness of the documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with the existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work/Project, or with existing systems, if such conflicts were known or should have

been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by the Contract Documents. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price proposal, as defined in section 6.2 of this Agreement.

**§ 3.1.3.6 Constructability Reviews:** After reviewing all design documents for completeness and coordination, the Contractor shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction. The Contractor shall furnish a written report after completing a check cross of references and complimentary drawings with the specifications, and in general evaluate whether:

1. The drawings and specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies
2. Named materials and equipment are commercially available and are performing well in similar installations
3. Specifications include alternatives in the event that a requirement cannot be met in the field
4. Constructability Review shall be conducted as a part of each of the following submittals:
  - a. 50% and 99% Schematic Design
  - b. 50% and 99% Design Development
  - c. 50% and 90% Construction Documentation

**§ 3.1.3.7 Construction Management Plan:** The Contractor shall prepare a construction management plan that includes:

1. A schedule including the sequencing of design and construction of the Project
2. Investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and underground utilities
3. Alternate strategies for fast-tracking or phasing construction
4. A list of possible work packages to be constructed under multiple Guaranteed Maximum Price proposals
5. Permitting strategy
6. Procurement recommendations for long-lead items

**§ 3.1.3.8 Approvals:** Contractor shall monitor all regulatory approvals required during the Working Drawing Phase. Contractor shall meet and confer with the Authorities Having Jurisdiction to advance the project through the approval process. The Contractor shall furnish any comments received or summary of discussions to the Owner and Architect for evaluation.

### **§ 3.1.4 Project Schedule**

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

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a



Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

### § 3.1.6 Cost Estimates

§ 3.1.6.1 Contractor shall prepare, based upon Design Documents prepared by the Architect and identified by the Owner, its own cost estimate of the Total Project Cost, of the Project at several times, as specified below. Contractor shall compare its cost estimate with the cost estimate independently prepared by the Architect for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the Owner, and with the goal that both cost estimates are less than or equal to the Owner's Total Project Cost. Contractor shall inform the Owner and recommend, if necessary, appropriate modifications of the Design Documents to lower both the Contractor's and the Architect's independent estimates to amounts equal to or lower than the Total Project Cost. Contractor's cost estimates shall be separated into discrete phases as the Owner may require for completion of the Project and prepared to reflect the full and complete cost of the Project to facilitate the Owner's evaluation of the Total Project Cost and the Owner's right to award multiple Guaranteed Maximum Price proposals as allowed elsewhere in this Agreement. Contractor's cost estimates shall be provided according to standards as specified below. Contractor shall include all costs to construct the building including items such as, General Conditions, bonds, insurance, permit fees, wage rates, Contractor fees, escalation costs, and other costs. A description of the cost assumptions shall be furnished by the Contractor. Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:

1. Schematic Design at 50% and 99%, Uniformat elemental categories and detailed to Level 2
2. Design Development at 50% and 99%; Masterformat detailed to Level 3;
3. Construction Documents; 50% milestone; Masterformat Level 3, specific to Project specification section; 90% milestone; Masterformat Level 3, specific to Project specification section
4. As Needed: Where Owner requests pricing for options such as alternates, phases, material options, and other items that may be required to give the Owner maximum flexibility in Design Document decision making and Guaranteed Maximum Price proposal approval.

Each cost estimate shall:

- a. Reflect the best professional estimate of actual costs anticipated.
- b. Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate.

§ 3.1.6.2 The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Total Project Cost, and make recommendations for corrective action and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. Progression from one Phase to another shall not proceed without documentation of the projects being within the Total Project Cost. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget and meet the Owner's requirements for dates of Substantial Completion and Final Completion.

### § 3.1.7 Subcontractors and Suppliers

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

### § 3.1.8 Procurement

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

Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall assume responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

### § 3.1.9 Compliance with Laws

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

### § 3.1.10 Other Preconstruction Services

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

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

«Construction Manager will provide a cashflow projection at least once a month showing what has been spent to date by month and what is forecasted to be spent through project close, by month. »

## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When directed by the Owner that the Construction Documents are approved for use in preparing a Guaranteed Maximum Price proposal, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance, if agreeable to Owner. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's proposal for the Cost of the Work, the Construction Manager's compensation for the General Conditions, the Construction Manager's Fee described in Section 6.1.2, and the Design Contingency, the Owner's Contingency and the Construction Manager's contingency. The Construction Manager's Fee and Construction Manager's compensation for the General Conditions reflected in the Guaranteed Maximum Price proposal (and the final Exhibit A Guaranteed Maximum Price Amendment) must remain as a percentage of the Cost of Work and shall not be a flat fee. The Guaranteed Maximum Price proposal shall be provided no later than thirty (30) days after approval of the Construction Documents by the Owner. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent (unless delegated by the Board). In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work/Total Project Cost and for the Project.

§ 3.2.1.1 The Owner may require multiple Guaranteed Maximum Price Amendments to complete the Project. In the event that the Project requires multiple Guaranteed Maximum Price Amendments, at the time any Guaranteed Maximum Price proposal is provided, in addition to other requirements of Section 3.2, the Construction Manager shall provide a Total Project Cost summary consisting of the latest cost estimate for the Project; including costs reflected in the Guaranteed Maximum Price proposal, previously accepted Guaranteed Maximum Price Amendments, and Work for which no Guaranteed Maximum Price proposal has been offered and only an estimate has been prepared. The Owner shall be entitled to rely upon the Total Project Cost summary. The Construction Manager shall provide a final Guaranteed Maximum Price Amendment based upon completion of Construction Documents.

§ 3.2.2 When a Guaranteed Maximum Price proposal is requested by the Owner and when the Construction Manager can identify the Construction Documents will require further development, the Construction Manager shall provide for approval by the Owner and within the Guaranteed Maximum Price proposal the cost for a Construction Manager's contingency which may be used by the Construction Manager only with prior written approval of the Owner and according to the procedures of Article 7 of A201-2017, as modified by the Owner for the Project, as well as the Owner's contingency and a design contingency (if a design contingency is desired by Owner). The design contingency shall clearly indicate the portion of the Work that was not reasonably inferable in the Construction Documents, and shall provide clarifications, and assumptions. The Construction Manager acknowledges that the Construction Documents

will be subject to further development that is consistent with the Construction Documents used to prepare the Guaranteed Maximum Price proposal Amendment, assumptions, and clarifications. In determining the proposed Guaranteed Maximum Price proposal the Construction Manager recognizes the Owner's right to revise the Construction Documents and shall anticipate revisions of the Construction Documents. The Construction Manager understands and agrees that if the Construction Manager and the Owner agree on a Guaranteed Maximum Price proposal, the Construction Manager will be obligated to perform the Work in accordance with the Construction Documents thereafter approved by or revised by the Owner in return for payment by the Owner of an amount equal to the Actual Cost of Work plus compensation for Fee's and General Conditions up to but not exceeding the Guaranteed Maximum Price proposal.

In addition to the Design Contingency and the Construction Manager's Contingency, the Owner will identify an Owner Contingency. The amount of this contingency will be determined by the Owner at the time of the Guaranteed Maximum Price proposal presentation and shall be added to the Guaranteed Maximum Price proposal for the exclusive use by the Owner. This contingency is for the sole use by the Owner for any purpose including, but not limited to, Project betterment, unforeseen site conditions and construction issues, if approved.

When multiple Guaranteed Maximum Price Amendments are required for the completion of the project, the most recent Guaranteed Maximum Price Amendment shall incorporate and supersede previous Guaranteed Maximum Price Amendments. Additionally, Contingencies and Allowances for each Guaranteed Maximum Price Amendment shall accumulate from prior Guaranteed Maximum Price Amendments and are not for use exclusively within each Guaranteed Maximum Price Amendment where the Contingency or Allowance was originally named. With written approval of the Owner, Contingencies and Allowances shall be reassigned for differing uses than stated in their original Guaranteed Maximum Price Amendment for the benefit of the Project.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances and labor rates; the Owner's contingency; the Construction Manager's design contingency; the compensation for Construction Manager's General Conditions; and the Construction Manager's Fee;
- .4 The date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based;
- .6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis; and
- .7 A schedule for the Work in the Guaranteed Maximum Price Amendment incorporating the Work within previous Guaranteed Maximum Price Amendments and forthcoming Guaranteed Maximum Price Amendments, if any.

**§ 3.2.4** The Owner shall be allowed not less than thirty (30) days to review and take action on the Construction Manager's Guaranteed Maximum Price proposal. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Manager's Contingency"). The Construction Manager's Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Manager's Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the



Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Manager's Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Manager's Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees, if required by Owner policy. Any unused Owner's contingency shall accrue to the Owner.

**§ 3.2.5** The Owner and the Architect may review and discuss the Guaranteed Maximum Price proposal in evaluation of the proposed Guaranteed Maximum Price proposal. Any such review or discussion and any failure to review or comment on or to advise of any errors or omission in the Guaranteed Maximum Price proposal shall not be a basis for the Construction Manager to assert a claim for any deficiency in the accuracy of completeness of the Guaranteed Maximum Price proposal or any error by the Construction Manager in preparing the proposed Guaranteed Maximum Price proposal. The Construction Manager shall have responsibility to assure that the Guaranteed Maximum Price proposal is accurate and complete and a true correct statement of the Construction Manager's intent and understanding of the overall scope of work. The Construction Manager shall have sole responsibility for completing the entire Construction Scope of Work within a Guaranteed Maximum Price Amendment(s) within the Contract Time(s) for the Work and for an amount not-to-exceed the Guaranteed Maximum Price. Nothing within the Guaranteed Maximum Price proposal shall modify the terms and conditions of this Agreement, or exhibits to this Agreement. Any modification to this Agreement or exhibits to this Agreement shall be in accordance with Section 2.1. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

**§ 3.2.6** The Owner's Board of Trustees or authorized designee shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees or authorized designee accepts the Guaranteed Maximum Price Amendment within thirty (30) days after Owner's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

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

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

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

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

**§ 3.3.1.2** The Construction Phase for the Work described in each Guaranteed Maximum Price Amendment shall commence upon the Owner's issuance of a Notice to Proceed. If a Building Permit is not available or other approvals are not available for the entire Project, the Contractor must commence work on those portions of the Project that do not

require a Building Permit or other approvals on receipt of a Notice to Proceed. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner.

**§ 3.3.1.3** The Construction Manager shall achieve Substantial Completion and Final Completion of the entire Work not later than the dates set out in the Guaranteed Maximum Price Amendment, subject to adjustment in the Contract Time as provided in the Contract Documents.

### **§ 3.3.2 Administration**

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

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

**§ 3.3.2.1.1** The Construction Manager shall include the following specific notices in the information to proposers:

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

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

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

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

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

**§ 3.3.2.1.3** The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at intervals agreed to by the Owner, at which the Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The minutes shall be completed using Owner's Project Management software. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees and/or Administration, at Owner's request, at no additional cost to Owner.

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment by Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a

submittal schedule in accordance with Section 3.10 of A201–2017, as amended by the Owner for the Project, including the Owner’s occupancy requirements.

#### **§ 3.3.2.3 Monthly Report**

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

#### **§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect at any time, including at the meetings referenced in paragraph 3.3.2.1.3 above, a daily log containing a record for each day of weather, portions of the Work in progress, Work accomplished, trades on site, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner. The log shall be completed using Owner’s Project Management software, or absent software, available to the Owner and Architect at any time during work hours, and shall be presented and discussed at regular progress meetings.

#### **§ 3.3.2.5 Cost Control**

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

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

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

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

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

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

### **ARTICLE 4 OWNER’S RESPONSIBILITIES**

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

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

**§ 4.1.2** Intentionally deleted.

**§ 4.1.3** The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs, including the Owner’s Contingency, the Construction Manager’s contingency and the design contingency, as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the

Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work if same are shown on documents provided by or obtained by the Construction Manager or if the Construction Manager reasonably should have known that such subsurface features were present on the Site.

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA A201-2017.

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

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

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

## § 4.2 Owner's Designated Representative

The Owner's Board of Trustees (or the Board's authorized delegate) shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board/authorized delegate designates as its authorized representatives, the following individuals: Matthew Calvert, Superintendent.

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

## § 4.3 Architect

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

## § 4.4 Inspection And Testing

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

## ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 5.1 Compensation

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

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

« Compensation for the services described in Sections 3.1 and 3.2 shall be included in the compensation described in Section 6.1; provided, however, if the Construction Phase does not commence for any reason, the Construction

Manager's compensation for the services described in Sections 3.1 and 3.2 shall be the necessary and reasonable cost of services actually performed, not to exceed the stipulated sum of (Written) Dollars and no/100 (TBD).»

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

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

« »	
Individual or Position	Rate
TBD	TBD

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement are significantly modified, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted.

## § 5.2 Payments

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

§ 5.2.2 Payments are due and payable within forty-five (45) days of Owner's receipt of the Construction Manager's invoice and Certification for Payment from the Architect. Amounts unpaid more than «forty-five» («45») days after the invoice receipt from the Architect shall bear interest at the rate set forth in Texas Government Code Section 2251.025.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee, plus the general conditions, the total of which shall not exceed the Guaranteed Maximum Price.

§ 6.1.2 The Construction Manager's Fee and General Conditions:

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

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum. No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 3.3.2.1.

«§ 6.1.2.1 The Construction Manager's Fee is a percentage of the actual Cost of the Work. The Fee is calculated as Number In Words (X.XX%) multiplied by the actual Cost of the Work.

«§ 6.1.2.2 The Construction Manager's compensation for General Conditions is a lump-sum, not-to-exceed amount of Number In Words (\$XXX). »

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

«§ 6.1.3.1 The Construction Manager's Fee is a percentage of the increased or decreased Cost of the Work. The Fee is calculated as Number In Words (X.XX%) multiplied by the actual Cost of the Work. »

«§ 6.1.3.2 The Construction Manager's compensation for General Conditions is a lump-sum, not-to-exceed amount and may only be adjusted for changes in the Work by agreement of Owner's Board of Trustees or its designee.»



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

« Refer to AIA A201, as modified by the Owner for the Project, for allowable markup; see AIA Document A201-2017, Section 7.1.4 »

§ 6.1.5 **General Conditions** All charges, if any, for general conditions (costs to be reimbursed) shall be delineated separately in the Guaranteed Maximum Price Amendment, and may include only the following: Project Executive, Senior Project Manager/Project Manager, General Superintendent(s), Superintendent including Vehicle &/or Allowance/Mileage, Assistant Superintendent(s), Project / Cost Engineer, Office/Technology Engineer, Project Expediter / Asst. PM, Field Office Manager/Secretary, Field Engineering/Layout, Accounting, Secretary/Admin. Personnel (including on-site), Quality Control Manager, General Purpose Labor, Subsistence/Per Diem, Payroll Taxes on General Conditions, Telephones/Pagers Labor Burden, Vehicle &/or Allowance/Mileage for all personnel, Mobilization / Demobilization, Temp Electric/Gas/Water Bill, Office Supplies and equipment, Telephone, Fax, Computer, Copier Costs, Ice, Cups & Water, Field office & furnishings, including on-site sanitary facilities, Estimating, Advertising for Subcontractors and suppliers, Delivery Service/Postage, Radios, CPM Schedule, Field Engineering & Equipment, As Builts (including electronic files), CM Office Trailers, Architect/Owner Trailer, CM Storage Sheds, CM Job Office Expense, CM Job Office Equipment, First Aid Supplies, Watchman/Security, Project Documentation, Small Tools, Building Permits/Fees/Licenses/Dues, Equipment Rental, Maint. & Insurance, Fire Protection/Fire Extinguishers, Job Signage/Advertising, Monthly aerial photos/progress photos, General Liability and/or Builders Risk Insurance, Shop Drawings (including printing), Stationery and Supplies, Temporary Fencing, Temporary Weather Protection, Temporary Partitions, Temporary Roads, Temporary Plumbing, Plans/Surveys/Blue Prints, Field Communications System, Chemical Toilets, Cellular Phones, Generators – portable, Barricades, Gas, Oil & Grease, Vehicle Repair, Clean Streets, Cleanup Periodical, Continuous Jobsite Clean-up, Dumpsters/Trash Haul, Final Cleaning, Building and Site dewatering, First Aid/Safety Equipment, Safety Coordinator, Job Safety Training, Drug testing, and minor work that may be included in the general conditions as allowed by Texas Government Code § 2269.255; and items described in more detail below.

§ 6.1.6 Refer to AIA A201, as modified by the Owner for the Project, for Rental rates for Construction Manager-owned equipment.

§ 6.1.7 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval.

§ 6.1.8 Costs paid or incurred by the Construction Manager for taxes, payment and performance bonds, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries, for Construction Manager's on-site Project Manager, on-site Project and Site Superintendents, on-site Assistant Superintendents, and Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior written approval.

§ 6.1.9 Actual rental charges for temporary facilities, machinery, equipment and hand tools not included in Section 6.1.5 and not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal.

§ 6.1.10 The general conditions shall not include the following: all reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal and data processing fees and expenses; and all travel, meals and lodging.

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

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

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

« Construction Manager shall return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be

credited to Owner. It is the intent of the parties that if the actual Cost of the Work plus the Construction Manager's fee, plus the Construction Manager's General Conditions is less than the Guaranteed Maximum Price, as it may be adjusted by approved Change Orders, the entire amount of the savings shall be returned to Owner.»

## **§ 6.2 Guaranteed Maximum Price**

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

## **§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner, with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. Either the Construction Manager or the Owner, as appropriate, may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly. For the duration of the Project, as the Construction Manager prepares subcontracts following the execution of a Guaranteed Maximum Price Amendment between the Owner and Construction Manager (buyout phase), the Construction Manager shall, not less than with each application for payment, provide the Owner with a Buyout Log. The Owner is entitled to rely on the accuracy of the Buyout Log. The Construction Manager's Buyout Log shall consist of the following:

**§ 6.3.5.1** Category of work organized to match the schedule of values;

**§ 6.3.5.2** Original cost used in the preparation of the Guaranteed Maximum Price Amendment;

**§ 6.3.5.3** Current cost of awarded subcontracts, indicating multiple Subcontractors as may be required to fulfill portions of a work category;

**§ 6.3.5.4** Subcontractor name of awarded subcontracts; and

**§ 6.3.5.5** Calculation of savings (or overage) per category of work and for the Project overall.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean the following direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work as described in this Article 7,

except those costs compensated as general conditions under Section 6.1.5 above. Costs constituting or comprising the Cost of the Work shall not include any items contained in A201-2017 as modified by the Owner for the Project and listed as General Conditions items listed in Exhibit D. The Cost of the Work shall include only the items set forth in this Section 7.1 through Section 7.7 below. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

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

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

## § 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work and, to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner.

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, to the extent not compensated under general conditions.

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

## § 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the amount due to the Construction Manager for the self-performed work. The Construction Manager, in furnishing a proposal for self-performed work, recognizes that the Construction Manager shall not be entitled to Construction Manager's Fee or Compensation for General Conditions for self-performed work.

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

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



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

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

§ 7.5.1 Costs of transportation, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal, including final clean-up, are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

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

#### § 7.6 Miscellaneous Costs

§ 7.6.1 Actual premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, less any rebates provided to the Contractor.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work, but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

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

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

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

§ 7.6.5.1 *Intentionally deleted.*

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

§ 7.6.7 Costs of document reproductions and delivery charges are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

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

§ 7.6.9 *Intentionally deleted.*

**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work are excluded as costs to be reimbursed as Cost of the Work and are considered General Conditions cost.

### **§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other actual, direct, and verifiable costs reasonably and necessarily incurred in the performance of the Work, to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner in advance, in writing.

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

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by or contributed to in whole or in part by negligence or failure of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel or any person over whom Construction Manager has contact or supervision to fulfill a specific responsibility to the Owner set forth in this Agreement or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers; and further provided that such costs of repair or correction is not recoverable by the Construction Manager after exhausting all attempts to obtain same from insurance, Subcontractors, suppliers, or bonding companies.

**§ 7.7.4** The costs described in the preceding Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary, no reimbursable cost or expense will be paid again if it is also included and paid in any general conditions amount submitted by Construction Manager.

### **§ 7.8 Related Party Transactions**

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

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9, including Section 9.6; Construction Manager shall not be entitled to Construction Manager's Fee or Compensation for General Conditions for work performed by a related party. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior written approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Delay damages or claims;
- .11 Storage costs, unless with prior written Owner approval;
- .12 All costs intentionally excluded, including, without limitation, those referenced in Articles 6 and 7 herein, including all subsections; and
- .13 All items included in either general conditions under Section 6.1.5 above, or the Construction Manager's Fee in Section 6.1.2 above.
- .14 Subcontractor Default Insurance (SDI). However, at the time of the Guaranteed Maximum Price proposal, if the Construction Manager can show that there would be either a significant cost savings, or an enhancement of the Project schedule, the Owner will have the option to allow the Construction Manager to include the purchase SDI for specific Subcontractors. Any cost for such Bonds or Insurance, if approved, will be added as a "Cost of the Work" and must be approved in writing by the Owner.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, including, without limitation, payment and performance bond rebates, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts available to the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 *Intentionally deleted.*

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost-plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

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

- .1 The Construction Manager shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, Owner or Owner's Agent. All bids or proposals shall be made available to the Owner on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. The Construction

- Manager shall review and evaluate all bids or proposals, and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work;
- .2 In the event that the Owner requires that the Construction Manager award any portion of the work to a bidder not proposed by the Construction Manager, the Owner shall compensate the Construction Manager by a change in price, time, or guaranteed maximum cost for any additional cost or risk that the Construction Manager may incur by reason of the Owner's requirements;
  - .3 The Construction Manager shall deliver a copy of all advertising, solicitation documents, bids, proposals, evaluations of proposals, and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the proposal; and
  - .4 The Construction Manager shall make all bids and proposals available for public inspection within seven (7) days following final selection of the subcontractors.

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

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

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

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

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

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

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

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. Where the Construction Manager seeks to self-perform portions of the Work required to be publicly advertised, the Construction Manager shall submit its proposal in the same manner as required of all subcontractors except that the proposal must be furnished to the Owner at least twenty-four (24) hours prior to receipt of bids or proposals from trade contractors or subcontractors. The Construction Manager, in furnishing a proposal for self-performed work, recognizes that the Construction Manager shall not be entitled to Construction Manager's Fee or Compensation for General Conditions for self-performed work, including work performed by a related party (as that term is defined in Section 7.8). Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 herein.

## **ARTICLE 10 ACCOUNTING RECORDS**

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

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 11.1 Progress Payments**

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

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

«n/a»

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

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

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction Manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the



Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values. Change Order(s) must be clearly identified, including by number.

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

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

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.
- .7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment.
- .8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

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

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

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

.4 Subtract withheld payments pursuant to Section 11.1.3.

**11.1.7.3** 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 the responsibility of the Contractor. 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. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

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

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

#### **§ 11.1.8 Retainage**

**§ 11.1.8.1** 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%)»

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

«N/A »

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be subject to written consent of the Contractor's Surety, and as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

« Refer to AIA A201, as modified by the Owner for the Project, for reduction or limitation of retainage.»

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Final Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Final Completion shall include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

«Refer to AIA A201, as modified by the Owner for the Project, for reduction or limitation of retainage »

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager shall submit a claim in accordance with AIA Document A201–2017, as amended by the Owner for the Project.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the 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 notification to the Owner of any delay.

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

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

## § 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, including the Construction Manager's responsibility to correct Work, except for the Construction Manager's responsibility to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and has been reviewed and approved by the Owner's auditors/accountants or other representatives;
- .3 a final Certificate for Payment has been issued by the Architect and approved by Program Manager, if applicable in accordance with Section 11.2.2.2;
- .4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The Construction Manager shall provide Owner with all certificate(s) required by 19 Tex. Admin. Code 61.1036-61.1040 (as applicable), signed by a duly authorized officer of the Construction Manager and properly notarized.
- .5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and
- .6 Owner's Board of Trustees has voted to accept the Work and approve Final Payment (unless otherwise delegated by the Board of Trustees).

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



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

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

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

Unless otherwise agreed in the Contract Documents, a demand for mediation, or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Sections 15.2 and 15.3 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment.

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

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

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

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

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

.3 Add the Construction Manager's Fee.

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

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

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

.7 Subtract all previous payments made by the Owner.

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

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

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

### § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the maximum rate permitted by law, including as set forth in Texas Government Code Chapter 2251.

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

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

### § 12.1.2

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

«n/a »

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

### § 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[ ☒ ] Litigation in a court of competent jurisdiction

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

## ARTICLE 13 TERMINATION OR SUSPENSION

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

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

§ 13.1.2 Intentionally deleted.

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

§ 13.1.4 Intentionally deleted.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work actually and necessarily incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

**§ 13.1.6.1** If the Owner 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 Construction Manager shall terminate such subcontract, purchase order or rental agreement. If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated.

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### **§ 13.2.2 Termination by the Owner for Cause**

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

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

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

### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

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

«As described by Article 13.2.2 »

### § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

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

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the insurance indicated in Exhibit B, Insurance and Bonds. The Construction Manager shall purchase and maintain insurance as required by Article 11, A201-2017 as amended for this Project, and as indicated in Exhibit B, Insurance and Bonds to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.

§ 14.3.1.1 Commercial General Liability.

§ 14.3.1.2 Automobile Liability.

§ 14.3.1.3 Intentionally deleted.

§ 14.3.1.4 Workers' Compensation.

§ 14.3.1.5 Intentionally deleted.

#### § 14.3.1.6 Other Insurance

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

Coverage

Limits

§ 14.3.1.7 Intentionally deleted.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

#### § 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Exhibit B Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.4 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.)*

«Not applicable »

§ 14.5 Other provisions:

#### § 14.5.1 Criminal History

Contractor shall comply with all requirements relating to criminal history included in the Contract Documents, including as required by AIA Document A201-2017 as amended for this Project Section 3.3.2.1, et seq.

#### § 14.5.2 Owner's Additional Requirements Related To Criminal Histories

Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent, or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

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

§ 14.5.4 Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

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

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



§ 14.6 In any adjudication of a claim for breach of contract under this Agreement, reasonable and necessary attorney's fees that are equitable and just may be awarded to the prevailing party. Otherwise, no provision of this Agreement is a waiver of immunity or defense or consent to suit.

§ 14.7 Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 14.8 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

§ 14.9 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns. The Construction Manager shall give provision within their agreement with subcontractors noting this agreement and all of its terms apply to their respective agreement performance.

§ 14.10 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.11 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.

§ 14.12 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.

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

§ 14.14 If any provision or part of the Contract Documents is held to be illegal, invalid, or unenforceable under any present or future law or regulation, such provision shall be fully severable and the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents. The remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

§ 14.15 If Owner has a Program Manager, the Program Manager shall have, and is hereby granted by Owner, full and complete power, authority, and discretion to act for, and in the name, place, and stead of, Owner in carrying out and discharging the responsibilities and obligations of Program Manager under the Agreement between the Owner and Program Manager; provided, however, that Program Manager shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided in the Agreement between the Owner and the Program Manager or specifically authorized in writing by Owner. In no event shall Program Manager be authorized to execute any documents, agreements, or other instruments on behalf of Owner. In no event shall Program Manager have the authority to modify completion dates of the Project Schedule without written approval by Owner. Program Manager shall have the authority to modify interim milestones dates not affecting the completion dates specified in the Agreements between the parties. In no event shall Program Manager have the authority to modify contract value of the Project without written approval by Owner. Program Manager shall have the authority to modify budgets, contingencies, allowances and similar accounting tasks not affecting the contract value specified in the Agreements between the parties. In no event shall Program Manager have the authority to relax or to bind the Owner to codes and standards imposed by the Authorities Having Jurisdiction, unless authorized in writing by

the Owner.

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1; in the event of any inconsistency or conflict between or among the documents that comprise this Contract, the order of precedence shall be:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified by Owner for the Project
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, Exhibit C, General Conditions of the Contract for Construction, as modified by the Owner for the Project
- .5 Other Exhibits:  
(Check all boxes that apply.)

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

☐

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .6 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the bidding requirements such as an advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, the Contractor's bid, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Contract. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- «.1 Owner's competitive procurement solicitation documents, including Owner's required certifications/Vendor Packet.
- .2 The Project Manual for the Project, including all sections of 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 Any modifications to this Agreement or to the Contract or any Contract Documents approved by the Parties.
- .7 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract.
- .8 Exhibit D – List of General Conditions
- .9 Exhibit E – Project Management Software
- .10 The portions of Contractor's responses and proposals to Owner's competitive procurement solicitation documents accepted by Owner.»

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

OWNER (Signature)

«Matthew Calvert  
Superintendent»  
«New Caney Independent School District »

(Date)

CONSTRUCTION MANAGER (Signature)

«TBD »« »

(Date)



# DRAFT Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor/Construction Manager at Risk, dated the «INSERT» day of «INSERT» in the year «2023»

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

«Owner's three-phase New Caney High School Athletic Projects and Career and Technical Education Projects:  
Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving  
Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving  
Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building»

**THE OWNER:**  
(Name, legal status and address)

«New Caney Independent School District»  
«21580 Loop 494»  
«New Caney, Texas 77357 »

**THE CONTRACTOR/CONSTRUCTION MANAGER:**  
(Name, legal status and address)

«TBD»

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended. Nothing contained in this Exhibit shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2.

##### § A.2.2 Liability Insurance

§ A.2.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### 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.

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

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§ A.2.2.2 The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date on which Owner begins to occupy or use any completed or partially-completed portions of the Work. If Owner occupies or uses any completed or partially-completed portion of the Work on any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work, pursuant to the Contract Documents. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, Contractor's builder's risk shall be primary and non-contributory.

§ A.2.2.3 The Architect shall be responsible for purchasing and maintaining the Architect's liability and worker's compensation insurance as provided in the Owner's contract with the Architect.

## **ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

### **§ A.3.1 General**

§ A.3.1.0 The Contractor and the Contractor's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims which may arise out of, or result from, the Contractor's operations under the Contract whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, including the following:

§ A.3.1.0.1 Claims under state and federal employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections A.3.2.5 and A.3.1.12);

§ A.3.1.0.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

§ A.3.1.0.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

§ A.3.1.0.4 Claims for damages insured by usual personal injury liability coverage;

§ A.3.1.0.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

§ A.3.1.0.6 Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;

§ A.3.1.0.7 Claims for bodily injury or property damage arising out of completed operations;

§ A.3.1.0.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18 indemnification); and

§ A.3.1.0.9 Claims for damages to the Work itself, through builder's risk insurance, pursuant to Section A.3.2.13.

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide original certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. The Contractor (and each Subcontractor) shall maintain the insurance coverages specified herein at all times during the term of the Contract or such later date specified herein. An additional certificate evidencing continuation of any insurance coverages that are required to remain in force after Final Payment, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner, its trustees, officers, employees, agents, and representatives as an additional insured or named insured when such coverages are required under the Contract Documents. All certificates required hereunder shall be in form and content satisfactory to Owner and shall include copies of all required insurance policies, declarations, and endorsements, containing all generally applicable conditions, definitions, and exclusions related to the Project.

§ A.3.1.1.1 Certificates must include a provision stating that coverages afforded under the policies will not be terminated, materially modified, or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner;

§ A.3.1.1.2 Certificates must be written by an insurance company or companies satisfactory to Owner and licensed to do business in the State of Texas by the Texas Department of Insurance, with a rating of not less than A-X in the latest available A.M. Best Key Rating Guide, Property-Casualty, and that permits waivers of subrogation; and

§ A.3.1.1.3 Certificates must be evidenced on an original ACORD Certificate of Insurance 25-S (7/90), AIA Document G715 current edition, each signed and with an original signature of the Authorized Representative, naming Owner as a certificate holder and attaching all endorsements required herein. Policy exclusions and restrictions should be clearly explained on the Certificate or in an attached letter from the Issuing Agency. Blank areas on the Certificate should have “not covered” written across the printed areas when coverage is not provided.

**§ A.3.1.2 Deductibles.** The Contractor shall disclose to the Owner any deductible applicable to any insurance required to be provided by the Contractor, and the Contractor shall be responsible for losses within the deductible.

**§ A.3.1.3 Additional Insured Obligations.** All insurance required herein shall name the Owner, its officers, employees, representatives and agents, as an additional insured, except Contractor’s Worker’s Compensation insurance. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, its trustees officers, employees, agents, and representatives, the Architect, the Program Manager, and the Architect’s and/or Program Manager’s consultants as additional insureds for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner, its trustees officers, employees, agents, and representatives as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions for which loss occurs during completed operations. All insurance required herein shall be, by endorsement, primary and non-contributory insurance with respect to the Owner, its trustees officers, employees, agents, and representatives and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect’s consultants, CG 20 32 07 04, unless otherwise required by Owner.

**§ A.3.1.4** No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner’s Board of Trustees, unless otherwise delegated. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner’s authorized representative detailed in the Contract. Said lack of insurance may then be grounds for termination or modification of the Contract.

**§ A.3.1.5** All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. The Contractor waives all rights of subrogation against Owner, its employees, officers, trustees, and agents, for damages caused by fire or other perils to the extent covered by insurance pursuant to Article A.3, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary or as an insured. Contractor, as appropriate, shall require of separate Contractors, Subcontractors, and Sub-subcontractors, agents, and employees of any of them, by appropriate written agreements, similar waivers, each in favor of the Owner. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section A.3.1.5 shall not prohibit this waiver of subrogation. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

**§ A.3.1.6** Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, representatives or agents.

§ A.3.1.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

§ A.3.1.8 Contractor and its subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Article A.3 have been received by Owner and the Architect has issued a written notice to proceed.

§ A.3.1.9 As an alternative and at Owner's sole option and expense, Owner may elect to furnish or to arrange for Contractor any part or all of the insurance required by this Article A.3. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ A.3.1.10 The Contractor shall furnish Owner all information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, amendments, renewals, notices, cancellations, and additional endorsements as required under the Contract Documents or as they are provided to Contractor, whichever is earlier.

§ A.3.1.11 The insurance required by Article A.3 shall be written for not less than the limits specified in the Contract Documents or the limits required by law, whichever coverage is greater. The stipulated limits of liability aggregate coverages shall be for this Project.

§ A.3.1.12 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§ A.3.1.13 In the event of partial or full occupancy by the Owner prior to Substantial Completion of the Project, the Contractor shall notify the property insurance carrier and obtain a "Use and Occupancy" waiver to prevent cancellation, lapse, reduction, or other invalidation of such insurance by occupancy. Certificates of endorsements for this waiver shall be furnished by the Owner and the Architect.

§ A.3.1.14 The Owner as fiduciary shall have power to adjust and settle a loss with property insurers. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds after notification of a Change in the Work in accordance with Article 7 of the General Conditions. The Contractor shall, as soon as the claim under the policy is settled, proceed with all due diligence with the rebuilding or reparation and shall not be entitled to any payment in respect thereto other than the said moneys received from insurance, but an extension of time for completion shall be allowed by the Architect for a just and reasonable period. All monies received under any such policies are to be paid to the Contractor by installments on the certificates of the Architect and to be applied in or towards the rebuilding or reparation of the work destroyed or injured. The Contractor shall pay all Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to their Sub-subcontractors in similar manner.

§ A.3.1.15 If the Contractor fails to purchase and maintain the required insurance, with all of the coverages and in the amounts described in the Contract Documents, the Contractor shall inform the Owner in writing prior to commencement of the Work. Upon receipt of notice from the Contractor, the Owner, in its sole discretion, may delay commencement of the Work and may obtain insurance that will protect the interests of the Owner, its trustees, officers, employees, agents, and representatives in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted to minimize the effect of any such failure on the Owner. In the event the Contractor fails to procure coverage, the Contractor waives all rights against the Owner, its trustees, officers, employees, agents, and representatives to the extent the loss would have been covered by the insurance to have been procured by the Contractor. The cost of the insurance shall be charged to the Contractor by a Change Order. If the Contractor does not provide written notice, and the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain the required insurance, the Contractor shall reimburse the Owner for all reasonable costs and damages attributable thereto. Contractor, as appropriate, shall require of separate Contractors, Subcontractors, and Sub-subcontractors, agents, and employees of any of them, by appropriate written agreements, similar obligations and liabilities, each in favor of the Owner.

### § A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance without interruption from the date of commencement of the Work until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

### § A.3.2.2 Commercial General Liability

#### § A.3.2.2.1

Commercial General Liability insurance for the Project written on an occurrence form with:

#### § A.3.2.2.1.1 Policy limits of not less than:

§ A.3.2.2.1.1.1 Each Occurrence	One Million Dollars (\$1,000,000) each occurrence Two Million Dollars (\$2,000,000) aggregate (a designated Construction Project general aggregate limit shall be provided)
§ A.3.2.2.1.1.2 Medical Expense (per person)	Ten Thousand Dollars (\$10,000) each occurrence (included with the per occurrence limits for Bodily Injury and Property Damage limits)
§ A.3.2.2.1.1.3 Products & Completed Operations	Two Million Dollars (\$2,000,000) aggregate (to be maintained for a period of two years after Final Payment; Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage)
§ A.3.2.2.1.1.4 Personal and Advertising Injury	One Million Dollars (\$1,000,000) each person
§ A.3.2.2.1.1.5 Fire, Lightning, or Explosion	One Million Dollars (\$1,000,000)

#### § A.3.2.2.1.2 Coverages including the following:

- § A.3.2.2.1.2.1 Occurrence Basis
- § A.3.2.2.1.2.2 Premises Operations
- § A.3.2.2.1.2.3 Contractual Liability Coverage (including insurance sufficient to cover Contractor's contractual indemnities)
- § A.3.2.2.1.2.4 Explosion, collapse, and underground (X, C, and U) coverage
- § A.3.2.2.1.2.5 Products/Completed Operations coverage for Contractor, its Subcontractors, and Owner
- § A.3.2.2.1.2.6 Broad Form Property Damage
- § A.3.2.2.1.2.7 Independent Contractors
- § A.3.2.2.1.2.8 General Aggregate Per Project Endorsement

§ A.3.2.2.1.3 All of the coverages which may be included in coverages A, B and C contained in the Standard Texas Form Commercial General Liability Policy, without deletion. Such policy must be issued upon an "occurrence," as distinguished from a "claims made," basis and shall be continued for a period of one (1) year after the completion of the services for the Project.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.



- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Comprehensive Automobile Liability Insurance covering vehicles owned, hired, and non-owned vehicles used, by or on behalf of the Contractor, with minimum combined single limit of not less than « One Million Dollars» (\$ « 1,000,000.00 » ) per occurrence or \$500,000.00 Bodily Injury (per person), \$1,000,000.00 Bodily Injury (per accident), and \$500,000.00 Property Damage (per accident), for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. Owner and its trustees, officers, representatives, agents, and employees shall be endorsed as Additional Insureds, ATIMA (As Their Interests May Appear).

**§ A.3.2.4** Excess (Umbrella) Liability Insurance of one times the Contract amount for all contracts with the following minimum and maximum: not less than Five Million Dollars (\$5,000,000) Each Occurrence and Five Million Dollars (\$5,000,000) Aggregate, with Aggregate Per Project Endorsement, and maximum limit of Twenty-Five Million Dollars (\$25,000,000). The Umbrella shall provide coverage over the Workers' Compensation, General Liability and Comprehensive Automobile Liability Insurance Coverages. The Owner, the Architect and all Consultants listed on the Title Page of the Project Manual shall be listed as Additional Insureds on the Contractor's policy associated with the Project. Provisions shall be included for Waiver of Subrogation against the Owner and Architect and its Consultants.

**§ A.3.2.5** Workers' Compensation not less than statutory limits mandated by state and federal laws with All States endorsement.

**§ A.3.2.5.1** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation 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 services on the Project is required for the duration of the Project. Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the Owner.

**§ A.3.2.5.2** Persons providing services on the Project ("Subcontractor") include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

**§ A.3.2.5.3** Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ A.3.2.5.4 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.

§ A.3.2.5.5 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

§ A.3.2.5.6 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 Owner showing that coverage has been extended.

§ A.3.2.5.7 The Contractor shall obtain from each person providing services on the Project, and provide to the Owner:

§ A.3.2.5.7.1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

§ A.3.2.5.7.2 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.

§ A.3.2.5.8 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

§ A.3.2.5.9 The Contractor shall notify the Owner 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.

§ A.3.2.5.10 The Contractor shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ A.3.2.5.11 The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:

§ A.3.2.5.11.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

§ A.3.2.5.11.2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;

§ A.3.2.5.11.3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

§ A.3.2.5.11.4 Obtain from each other person with whom it contracts, and provide to the Contractor:

§ A.3.2.5.11.4.1 A certificate of coverage, prior to the other person beginning work on the Project; and

§ A.3.2.5.11.4.2 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;

§ A.3.2.5.11.5 Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

§ A.3.2.5.11.6 Notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew, or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

§ A.3.2.5.11.7 Contractually require each person with whom it contracts to perform as required by §§ A.3.2.5.11.1 – A.3.2.5.11.6 with the certificates of coverage to be provided to the person for whom they are providing services.

§ A.3.2.5.12 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing 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, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self- Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ A.3.2.5.13 The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor that entitles the Owner 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 Owner.

§ A.3.2.5.14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i)

§ A.3.2.6 Employers' Liability with policy limits not less than statutory limits mandated by state and federal laws, including, at a minimum, « One Million Dollars » (\$ « 1,000,000 » ) Bodily Injury with Accident - each accident, « One Million Dollars » (\$ « 1,000,000 » ) Bodily Injury by Disease - each employee, and « One Million Dollars » (\$ « 1,000,000 » ) Bodily Injury by Disease - policy limit. A waiver of subrogation shall be granted in favor of the Owner.

§ A.3.2.7 Insurance for claims under the Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks.

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate.

§ A.3.2.13 Contractor shall, at its expense, obtain and, during the progress of the Work, maintain full builder's risk "all-risks" or equivalent insurance policy, including boiler and machinery insurance, on said Work in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, Guaranteed Maximum Price), plus value of subsequent Contract Modifications and labor performed and cost of materials and equipment supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis.

§ A.3.2.13.1 For any claim made against the builder's risk insurance, the deductible shall not exceed \$2,500 for a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of less than \$4 million. For a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of \$4 million or more, the deductible shall not exceed \$5,000.



§ A.3.2.13.2 Coverage shall insure against the perils of fire (with extended coverage) and physical loss or damage, including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary structures, debris removal including demolition occasioned by enforcement of any applicable legal requirements, ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials, and all other perils, and shall include all Work incorporated in the building and all materials for the same in or about the premises, including materials stored on-site, off-site and in transit, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses.

§ A.3.2.13.3 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Contractor shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.3.2.13.2, notwithstanding the undertaking of the Work. The Contractor shall be responsible for all co-insurance penalties.

§ A.3.2.13.4 Form of policy to be used shall be "Completed Value Builder's Risk". Both the Owner and the Contractor shall be a named insured under the policy or policies, and the insurance shall also include the interests of Contractor, Subcontractors, and sub-subcontractors. Contractor shall furnish certified copies of the required policy or policies, with receipts for premiums paid for such insurance, to the Owner and the Architect.

§ A.3.2.13.5 Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion and shall continue such insurance following Final Completion or, if necessary, replace such insurance policy with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.3.2.13.6 If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner.

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased by Contractor (and each Subcontractor, as applicable) from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor (and each Subcontractor, as applicable) shall maintain the required insurance without interruption from the date of commencement of the Work until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

§ A.3.3.2.1 Intentionally deleted.

[ ☐ ] § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than  (\$  ) per claim and  (\$  ) in the aggregate, for Work within fifty (50) feet of railroad property.

[ ☐ ] § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than  (\$  ) per

claim and « » (\$ « » ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ « » ] § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[ « » ] § A.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

[ « » ] § A.3.3.2.6 Other Insurance

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

#### Coverage

#### Limits

### § A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

#### Type

Payment Bond

Performance Bond

#### Penal Sum

100% of the Contract Sum/Guaranteed Maximum Price

100% of the Contract Sum/Guaranteed Maximum Price

Payment and Performance Bonds shall be in a form approved by the Owner.

§ A.3.4.1 Each bond shall be of a penal sum equal to 100% of the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, whichever is applicable; provided, however, no limitation herein shall limit Contractor’s liability under the Contract Documents. 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 full force throughout the contractual correction period of the Agreement. Except as provided below, such bonds shall be delivered to the Owner and the Architect prior to commencement of the Work. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner’s Representative with Architect’s recommendation. The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. (If a fixed Contract amount or Guaranteed Maximum Price has not been determined at the time the Contract is awarded, then the penal sums of the payment and performance bonds delivered to the Owner must each be in an amount equal to the Project budget, as specified in the request for qualifications or request for sealed proposals. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the Owner to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.)

§ A.3.4.2 All bonds shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors, and shall be issued by a surety company acceptable to the Owner and licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, with appropriate underwriting limitation, on the U.S. Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). The surety company shall have a rating of not less than “A-X” according to the latest posted ratings on the A.M. Best website, [www.ambest.com](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company’s capital and surplus, then the surety company issuing

the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that the amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

§ A.3.4.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ A.3.4.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

Claims must be sent to the Contractor and his Surety, in accordance with Texas Government Code, Chapter 2253. The Owner will furnish in accordance with such Article and applicable legal requirements, 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.

#### **ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

«None. »

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

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

«New Caney ISD's three-phase New Caney High School Athletic Projects and Career and Technical Education Projects:  
Phase 1: Baseball, Softball fields with press boxes, Batting cages, Storage, Tennis Courts, and Paving  
Phase 2: CTE Building, Greenhouse, BB and SB Fieldhouse, Practice Fields, Detention, and Paving  
Phase 3: Track/Field, Football Field, Ticket booth, FB press box, storage building »

**THE OWNER:**  
(Name, legal status and address)

«New Caney Independent School District»  
22784 Hwy 59 S  
Building "E"  
Porter, Texas 77365 »» »

**THE ARCHITECT:**  
(Name, legal status and address)

VLK Architects  
20445 TX-249  
Suite 350  
Houston, TX 77070

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

«TBD »» »

The Owner may retain Program Manager(s) to carry out some of the functions of the administration of the Owner's construction program. The Contractor, Architect, and Program Manager (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or Program Manager, including the assignment of the Program Manager, may be changed by Owner during the Project.

### TABLE OF ARTICLES

- |   |                    |
|---|--------------------|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER              |
| 3 | CONTRACTOR         |
| 4 | ARCHITECT          |
| 5 | SUBCONTRACTORS     |

### 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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- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



## INDEX

(Topics and numbers in bold are Section headings.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

#### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### **Access to Work**

**3.16**, 6.2.1, 12.1

#### Accident Prevention

10

#### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

#### Addenda

1.1.1

#### Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### **Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.4**

### **Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### **Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

#### Advertisement or Invitation to Bid

1.1.1

#### Aesthetic Effect

4.2.13

### **Allowances**

**3.8**

### **Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

#### Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

#### Arbitration

8.3.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

### **Architect, Definition of**

**4.1.1**

#### Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

#### Architect, Limitations of Authority and

#### Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,  
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,  
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

#### Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

#### Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

#### Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

#### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

#### Architect's Copyright

1.1.7, 1.5

#### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.4.2, 15.2

#### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

#### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

#### Architect's Interpretations

4.2.11, 4.2.12

#### Architect's Project Representative

4.2.10

#### Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

#### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

#### Architect's Representations

9.4.2, 9.5.1, 9.10.1

#### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

#### Asbestos

10.3.1

#### Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

#### Award of Separate Contracts

6.1.1, 6.1.2

### **Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

#### Bidding Requirements

1.1.1

#### Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,  
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

#### Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### **Bonds, Performance, and Payment**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

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

**1.8**

#### Building Permit

3.7.1

### **Capitalization**

**1.3**

#### Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, **9.5**, **9.6.1**, 9.6.6, 9.7,  
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

#### Certificates of Inspection, Testing or Approval

13.4.4  
Certificates of Insurance  
9.10.2  
**Change Orders**  
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
**Change Orders**, Definition of  
**7.2.1**  
**CHANGES IN THE WORK**  
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
11.5  
**Claims**, Definition of  
**15.1.1**  
Claims, Notice of  
1.6.2, 15.1.3  
**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1  
**Claims for Additional Cost**  
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**  
**Claims for Additional Time**  
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**  
**Concealed or Unknown Conditions, Claims for**  
**3.7.4**  
Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
11.3.2, 14.2.4, 15.1.7  
Claims Subject to Arbitration  
15.4.1  
**Cleaning Up**  
**3.15**, 6.3  
Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**  
**Commencement of the Work**, Definition of  
**8.1.2**  
**Communications**  
3.9.1, **4.2.4**  
Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 14.1.2, 15.1.2  
**COMPLETION, PAYMENTS AND**  
**9**  
Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
9.10.3, 12.2, 15.1.2  
Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,  
13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,  
15.2.8, 15.4.2, 15.4.3  
Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3  
Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4  
Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
15.4.4.2  
**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**  
1.1.4, **6**  
**Construction Change Directive**, Definition of  
**7.3.1**  
**Construction Change Directives**  
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,  
**7.3**, 9.3.1.1  
Construction Schedules, Contractor's  
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
**Contingent Assignment of Subcontracts**  
**5.4**, 14.2.2.2  
**Continuing Contract Performance**  
**15.1.4**  
**Contract**, Definition of  
**1.1.2**  
**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**  
5.4.1.1, 5.4.2, 11.5, **14**  
Contract Administration  
3.1.3, 4, 9.4, 9.5  
Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1  
Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3  
**Contract Documents**, Definition of  
**1.1.1**  
**Contract Sum**  
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
**9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**  
**Contract Sum**, Definition of  
**9.1**  
Contract Time  
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,  
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5  
**Contract Time**, Definition of  
8.1.1  
**CONTRACTOR**  
**3**  
**Contractor**, Definition of  
**3.1**, **6.1.2**  
**Contractor's Construction and Submittal**  
**Schedules**  
**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,  
10.2, 10.3, 11.3, 14.1, 14.2.1.1  
**Contractor's Liability Insurance**  
**11.1**



Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
2.2.2, 9.7

Contractor's Right to Terminate the Contract  
14.1

Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11

Copyrights  
1.5, **3.17**

Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost**, Definition of  
**7.3.4**

Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**  
**3.14**, 6.2.5

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of  
**8.1.2**

**Date of Substantial Completion**, Definition of  
**8.1.3**

**Day**, Definition of  
**8.1.4**

Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

**Digital Data Use and Transmission**  
**1.7**

Disputes  
6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
**3.11**

**Drawings**, Definition of  
**1.1.5**

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2

**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3



Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

## **GENERAL PROVISIONS**

### **1**

#### **Governing Law**

##### **13.1**

Guarantees (See Warranty)

#### **Hazardous Materials and Substances**

10.2.4, **10.3**

Identification of Subcontractors and Suppliers  
5.2.1

#### **Indemnification**

3.1.7, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

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

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4

#### **Initial Decision**

##### **15.2**

#### **Initial Decision Maker, Definition of**

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Injury or Damage to Person or Property**

**10.2.8**, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

#### **Instruments of Service, Definition of**

**1.1.7**

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

### **11**

#### **Insurance, Notice of Cancellation or Expiration**

**11.1.4**, **11.2.3**

#### **Insurance, Contractor's Liability**

##### **11.1**

Insurance, Effective Date of  
8.2.2, 14.4.2

#### **Insurance, Owner's Liability**

##### **11.2**

#### **Insurance, Property**

**10.2.5**, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1

Insured loss, Adjustment and Settlement of  
11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

#### **Interest**

##### **13.5**

#### **Interpretation**

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award  
15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
15.1.2, 15.1.3, 15.1.5

#### **Materials, Hazardous**

**10.2.4**, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

#### **Mediation**

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,  
15.4.1.1

#### **Minor Changes in the Work**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

## **MISCELLANEOUS PROVISIONS**

### **13**

#### **Modifications, Definition of**

##### **1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,  
10.3.2

#### **Mutual Responsibility**

##### **6.2**

#### **Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2

#### **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,  
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,  
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,  
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,  
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

#### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5,  
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,  
14.3.1

#### **OWNER**

**2**

**Owner**, Definition of

##### **2.1.1**

**Owner**, Evidence of Financial Arrangements

**2.2**, 13.2.2, 14.1.1.4

**Owner**, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1,  
13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,  
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,  
15.2.7

**Owner's Insurance**

##### **11.2**

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

**2.5**, 14.2.2

**Owner's Right to Clean Up**

##### **6.3**

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

##### **6.1**

**Owner's Right to Stop the Work**

##### **2.4**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

**Ownership and Use of Drawings, Specifications**

**and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,  
5.3

**Partial Occupancy or Use**

9.6.6, **9.9**

**Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

#### **PAYMENTS AND COMPLETION**

**9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

**Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

#### **PERSONS AND PROPERTY, PROTECTION**

##### **OF**

##### **10**

Polychlorinated Biphenyl

10.3.1

**Product Data**, Definition of

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project**, Definition of

##### **1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, **11.2**

**Proposal Requirements**

1.1.1

#### **PROTECTION OF PERSONS AND PROPERTY**

##### **10**

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4  
Rejection of Work  
4.2.6, 12.2.1  
Releases and Waivers of Liens  
9.3.1, 9.10.2  
Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1  
Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field Conditions by Contractor**  
**3.2**, 3.12.7, 6.1.3  
Review of Contractor's Submittals by Owner and Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and Samples by Contractor  
3.12  
**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4  
**Royalties, Patents and Copyrights**  
**3.17**  
Rules and Notices for Arbitration  
15.4.1  
**Safety of Persons and Property**  
**10.2**, 10.4  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4  
**Samples**, Definition of  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
3.11, **3.12**, 4.2.7  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2**, 9.3.1  
Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Separate Contractors**, Definition of  
**6.1.1**  
**Shop Drawings**, Definition of  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
3.11, **3.12**, 4.2.7  
**Site, Use of**  
**3.13**, 6.1.1, 6.2.1  
Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  
Special Inspections and Testing  
4.2.6, 12.2.1, 13.4  
**Specifications**, Definition of  
**1.1.6**  
**Specifications**  
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14  
Statute of Limitations  
15.1.2, 15.4.1.1  
Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1  
Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor**, Definition of  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7  
**Subcontractual Relations**  
**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  
Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3  
Submittal Schedule  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
6.1.1, **11.3**  
**Substances, Hazardous**  
**10.3**  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2  
**Substantial Completion**, Definition of  
**9.8.1**  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
2.3.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
**Sub-subcontractor**, Definition of  
**5.1.2**  
Subsurface Conditions  
3.7.4  
**Successors and Assigns**  
**13.2**  
**Superintendent**  
**3.9**, 10.2.6  
**Supervision and Construction Procedures**  
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4  
Suppliers  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1  
Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of  
9.8.5, 9.10.2, 9.10.3

Surveys  
1.1.7, 2.3.4

### **Suspension by the Owner for Convenience 14.3**

Suspension of the Work  
3.7.5, 5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14

### **Taxes**

3.6, 3.8.2.1, 7.3.4.4

### **Termination by the Contractor**

14.1, 15.1.7

### **Termination by the Owner for Cause**

5.4.1.1, 14.2, 15.1.7

### **Termination by the Owner for Convenience 14.4**

Termination of the Architect  
2.3.3  
Termination of the Contractor Employment  
14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14**

#### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

### **TIME**

### **8**

#### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

#### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,  
15.1.2, 15.1.3, 15.4

#### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

### **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

### **12**

#### **Uncovering of Work**

#### **12.1**

Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3

#### **Unit Prices**

7.3.3.2, 9.1.2

#### **Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

#### **Use of Site**

3.13, 6.1.1, 6.2.1

#### **Values, Schedule of**

9.2, 9.3.1

Waiver of Claims by the Architect  
13.3.2

Waiver of Claims by the Contractor  
9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages  
14.2.4, 15.1.7

#### **Waiver of Liens**

9.3, 9.10.2, 9.10.4

#### **Waivers of Subrogation**

6.1.1, 11.3

#### **Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,  
15.1.2

#### **Weather Delays**

8.3, 15.1.6.2

#### **Work, Definition of**

#### **1.1.3**

#### **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
13.2, 13.3.2, 15.4.4.2

#### **Written Interpretations**

4.2.11, 4.2.12

#### **Written Orders**

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## 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), 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. The solicitation documents used by the Owner, including advertisement or Requests for bids or Proposals, Instructions to Bidders, other information furnished by the Owner in anticipation of receiving bids or proposals, and Addenda relating to such solicitation documents, except to the extent that the proposal has been modified by the terms of the Contract shall be a part of the Contract Documents. Any reference to any Contract Documents shall mean the document as amended and/or supplemented for this Project.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract") 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.

**§ 1.1.2.1** To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner's authorized representative, after approval by Owner's Board of Trustees, unless otherwise delegated. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract. Contractor's signing of the Agreement shall be considered as signing all Contract Documents identified therein.

**§ 1.1.2.2** After execution of the original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Trustees, unless otherwise delegated, and signed by an authorized representative of Owner's Board of Trustees. As a material consideration for the making of the Contract, Modifications to the Contract shall not be construed against the maker of said Modifications.

**§ 1.1.2.3** In the event of conflict, the order of precedence of the Contract Documents shall be as listed in the Agreement. Terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions, and the terms and conditions in the General Conditions shall take precedence over all other terms and conditions contained in the other Contract Documents, except for Exhibit A, "Insurance and Bonds," attached to the Agreement, which shall take precedence over the General Conditions. An enumeration of the Contract Documents and their order of precedence, other than a Modification, appear in Article 9 of the AIA A101, as modified by the Owner for the Project

**§ 1.1.2.4** Any reference to the Agreement, General Conditions, or any other Contract Document shall mean the document as amended and/or supplemented for this Project.

#### § 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. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items of cost or value needed to produce, construct, and fully complete the public Work identified by the Contract Documents. The Contract

Documents include all Construction Documents, such as Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy, safety, and security standards in 19 TAC Section 61.1040, and any other standards to which the Architect is subject pursuant to applicable law or contract. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project.

#### **§ 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 respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials or documents, including those in electronic form, prepared by the Architect and the Architect's consultants and shall set forth in detail the requirements for construction of the Project.

#### **§ 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 Project Manual**

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

#### **§ 1.1.10 Project Manual Addenda**

Project Manual Addenda are written, or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and Subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

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

#### **§ 1.1.12 Abbreviations**

AIA:	American Institute of Architects
AIEE:	American Institute of Electrical Engineers
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute
AISC:	American Institute of Steel Construction
ANSI:	American National Standards Institute
ASA:	American Standards Association



ASTM:	American Society of Testing Materials
AWSC:	American Welding Society Code
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act
EPA:	Environmental Protection Agency
FS:	Federal Specification
NEC:	National Electrical Code
NIC:	Not in Contract (indicates work not to be done by this Contractor under this Agreement)
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
TAS:	Texas Accessibility Standards
UL:	Underwriters Laboratories, Inc.

### § 1.1.13 Miscellaneous Other Words

§ 1.1.13.1 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.

§ 1.1.13.2 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.

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

§ 1.1.13.4 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.

§ 1.1.13.5 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.

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

1. Precipitation (rain, snow, or ice) in excess of twenty-five one hundredths of an inch (0.25") liquid measure, hereafter referred to as Standard Baseline.
2. Temperatures that do not rise above that required for the day's construction activity, if such temperature requirement is specified or accepted as standard industry practice.
3. Sustained wind in excess of twenty-five (25) m.p.h.
4. "dry-out" or "mud" days resulting from precipitation that occur beyond the standard baseline; only if there is a hindrance to site access or sitework and Contractor has taken all reasonable accommodations to avoid such hindrance; and, at a rate no greater than 1 make-up day for each day or consecutive days of precipitation beyond the Anticipated Adverse Weather Days that total 1.0 inch or more, liquid measure.
5. Adverse weather prevents work on the project for fifty percent (50%) or more of the Contractor's scheduled work day and critical path construction activities were included in the day's schedule, including a weekend day or holiday if Contractor has scheduled construction activity that day.

§ 1.1.13.6 Net Days: Actual Adverse Weather Days experienced to date less Anticipated Adverse Weather Days anticipated to date. Actual Instruction Days experienced to date less Anticipated Instruction Days anticipated to date.

§ 1.1.13.7 Instruction Days: Regular Work Days when the Owner operations 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 Instruction Days from the total amount of

approved Instruction Days.

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

§ 1.1.13.9 The term “Direct Labor Cost” means the actual and verifiable salaries and wages (basic, premium and incentive) paid to personnel, but does not include indirect payroll related costs or fringe benefits (Labor Cost Burden).

§ 1.1.13.10 The term “Labor Cost Burden” means the actual and verifiable cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Labor Cost Burden excludes all forms of general liability policy premiums and deductibles, safety training, tuition cost reimbursement, small tool expense, and union dues. The Owner reserves the right to request evidence of Labor Cost Burden at any time from Contractor and Subcontractors.

§ 1.1.14 The term “Compensable Change” means circumstances involving the performance of Extra Work:

- 1 that are the result of
  - (1) Differing Site Conditions,
  - (2) amendments or additions to Applicable Laws, which amendments or additions are enacted after the execution of the Agreement,
  - (3) a Change requested by Owner in accordance with the conditions of authorization applicable to Compensable Changes set forth in Article 7, below, or
  - (4) other circumstances involving a Change in the Work for which Contractor is given under the Contract Documents a specific and express right to a Change Order to the Contract Price;
- 2 that are not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or violation of an Applicable Law, or by a failure of Contractor or a Subcontractor, of any Tier, to comply with the Contract Documents;
- 3 for which a Change Order is neither prohibited by nor waived under the terms of the Contract Documents; and
- 4 that if performed would require Contractor to incur additional and unforeseeable Allowable Costs that would not have been required to be incurred in the absence of such circumstances.

§ 1.1.15 The term “Compensable Delay” means a Delay to the critical path of activities affecting Contractor’s ability to achieve Substantial Completion of the entirety of the Work within the Contract Time:

- 1 that is the result of
  - (a) a Compensable Change,
  - (b) the active negligence of Owner, Architect, a Owner Consultant or a Separate Contractor,
  - (c) a breach by Owner of an obligation under the Contract Documents, or
  - (d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Change Order adjusting the Contract Price;
- 2 that is not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; and
- 3 for which a Change Order to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents.

§ 1.1.16 The term “Excusable Delay” means a Delay, other than a Compensable Delay, to Contractor’s ability to achieve Substantial Completion or Final Completion of the Work within the Contract Time that is: (1) not caused, in whole or in part, by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) unforeseeable, unavoidable and beyond the control of Contractor and the Subcontractors, of every Tier; and (3) the result of a Force Majeure Event. Without limitation to the foregoing,



neither the bankruptcy, insolvency nor financial inability of Contractor or a Subcontractor, of any Tier, nor any failure by a Subcontractor, of any Tier, to perform any obligation imposed by contract or Applicable Laws shall constitute a ground for Excusable Delay.

**§ 1.1.17** The term “Unexcused Delay” means any Delay that is not a Compensable Delay or Excusable Delay or that constitutes a Compensable Delay or Excusable Delay for which Contractor is not entitled to a Change Order to the Contract Time, including, without limitation, the following: (1) Delay caused by an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, a violation of an Applicable Law or a failure by Contractor or any Subcontractor, of any Tier, to comply with the Contract Documents; (2) Delay for which Contractor has failed to provide a timely and complete Notice of Delay or Request for Extension; or (3) Delay associated with any circumstances where the costs or risk associated with such circumstances are designated in the Contract Documents as being at Contractor’s risk or Contractor’s Own Expense.

## **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

**§ 1.2.1.2** During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless the Contractor obtained a decision in writing from the Architect as to what shall govern before the submission of the Contractor’s proposal. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect’s decision shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

## **§ 1.2.4 Relation of Specifications and Drawings**

General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal inconsistencies, then the Contractor shall base the bids and construction on the most expensive combination of quality and quantity of Work indicated. If Drawings and Specifications are not in concurrence regarding quantity or quality, Contractor shall request interpretation from the Architect. For purposes of construction, the Architect shall determine in writing the appropriate Work, after the Contractor brings the inconsistency to the Architect’s attention. Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

**§ 1.2.4.1** 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 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, 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 Materials, Equipment and Processes**

The mechanical, electrical, and plumbing drawings show the general arrangement and extent of the Work. Exact location and arrangement of the various parts shall be determined with the approval of the Architect after equipment has been selected and as the Work progresses.

**§ 1.2.5.1** All Work shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the bidding instructions concerning equipment requiring area not shown on the Construction Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. The Contractor shall be required to submit material data and drawings on all equipment, which may vary from the Drawings and Project Manual, and any interferences must be eliminated before Work proceeds.

**§ 1.2.5.2** Where in the Project Manual, Specifications, and Drawings, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contract Documents, equally compatible with the existing installations, and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved in advance by the Architect and Owner; however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project in writing.

**§ 1.2.5.3** 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. 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.

### **§ 1.2.6 Standards and Requirements**

When the Work is governed by reference to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, the current edition as of the date of execution of the Agreement shall apply. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

### **§ 1.2.7 Errors in Construction Documents**

The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions. The Contractor stipulates and agrees that the Owner has no duty to discover any errors, inconsistencies, or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. Owner makes no warranty as to the completeness, adequacy, and accuracy of any Drawings, Plans, Specifications or other Construction 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. The Contractor shall not be entitled to any damages or increase in the Contract Sum due to delays or disruptions to the Work.

### **§ 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** All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership, of the Instruments of Service/Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service or Construction Documents. The Owner holds perpetual right to use all of the Instruments of Service / Construction Documents for this Project. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

**§ 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 copyright holder. All copies of the Instruments of Service and Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered to the individual for which it was intended in person, by registered or certified mail, return receipt requested, by courier service providing proof of delivery, or by electronic transmission (facsimile or email), with electronic confirmation of receipt, if a method for electronic transmission is set forth in the Agreement. For notices delivered by electronic transmission and received after 5:00 p.m. on a day on which the recipient's offices are open, or on a weekend, Holiday, or other day on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next day on which the recipient's offices are open.

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

### § 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, including, in the Owner's sole discretion, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. Notwithstanding any provision herein to the contrary, if the parties agree to an exchange of electronic data/CAD files, such transfer shall be in accordance with the following requirements: the seals and signatures shall be removed from any Drawings or Project Manual and the following statement substituted: The record copy of this Drawing or Project Manual is on file at the Architect's office. This electronic document is released for the purposes of reference, coordination and/or facility management under the authority of Texas Registration Number Architect License No. (insert License #). Any modification of this Drawing or Project Manual shall be in compliance with the Texas Board of Architectural Examiner's rules.

### § 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 Section 1.7, above, or any use of Contract Documents or any other information or documentation in digital form inconsistent with those protocols set forth in Section 1.7, above, 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 Parties to Consult

§ 1.9.1 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.

§ 1.9.2 Contractor acknowledges that the Contract Sum reflects Owner's absolute budgetary limit for the Costs of the Work. Should the Contractor become aware of circumstances with respect to the Work that, if not addressed or remedied would lead to a cost overrun, it shall immediately notify Owner and Architect of the existence of such circumstances and its recommendation for addressing the circumstances, including any possible elimination or offset of the cost overrun. If at any time circumstances arise that might result in the Contract Sum being exceeded, the Owner, Contractor and Architect shall consult and revise the Drawings and Project Manual (including, but not limited to consideration of substitutions of materials) in such fashion as to cause the Work as revised to be accomplished for the Contract Sum; provided that no such revision shall result in a material diminishment of the square footage of the instructional facilities.

## 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. All parties understand that only the Board of Trustees acting as a body corporate has the authority to bind the Owner with respect to all matters requiring the Board's approval under current policy of the Board of Trustees, including, but not limited to, a Change Order or Construction Change Directive modifying the Contract Sum or an extension to the date of Substantial or Final Completion. The Board of Trustees may designate in writing one or more persons to represent the Owner and act on its behalf for such matters, as well as day-to-day operations under the Contract, in accordance with the current policy of the Board of Trustees; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Neither Architect nor Contractor may rely upon the direction of an employee of Owner who has not been designated as set forth herein, and Owner shall not be responsible, financially or otherwise, for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner with respect to matters requiring Owner's approval or authorization. The Owner has contracted with the Architect who will carry out the functions of administration of the Project and the initial arbiter of Claims as identified in Section 15.2.

§ 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.

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

§ 2.2 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 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 whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

§ 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 known to the Owner describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes, or pipelines, or the presence or absence of easements. The Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner and shall exercise proper diligence and take appropriate precautions relating to the safe performance of the Work. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request. Absent such timely request by Contractor,



any Claim based upon lack of such information or services shall be waived. The 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.

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

If the Contractor fails to correct non-conforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by the Contract or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order 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 any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

#### **§ 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Owner or 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 actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants' additional services and expenses 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 after receipt of written notice from the Owner therefor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **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. If the Work is performed under a Construction Manager at Risk delivery method, the term "Contractor" shall include the Construction Manager or its authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents and in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship. Workmanship shall be of a quality to produce first class results. This shall mean that all material shall be installed in a true and straight alignment, level and plumb, patterns shall be uniform, and jointing of materials shall be flush and level unless otherwise directed in writing by the Architect. All labor shall be performed in the best manner by laborers, workers, and mechanics skilled in their respective trades.

**§ 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, activities of the Owner (or Owner's Program Manager, if applicable), or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

**§ 3.1.4** By submission of a proposal, 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 the Contractor 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 the Contractor is able to furnish the plant, tools, materials, supplies, equipment, and

labor required to timely complete the Work and perform its obligations hereunder and that the Contractor is sufficiently experienced and competent to do so; (3) that the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi- public authorities having jurisdiction over the Contractor, the Work, or the site of the Project; and (4) that the execution of the Contract and its performance thereof are within the Contractor's duly-authorized powers.

**§ 3.1.5** Pursuant to Texas Education Code Section 44.034, Contractor must give advance written notice to the Owner if the Contractor or an owner or operator of the Contractor has been convicted of a felony. The Owner may terminate the Contract if the Owner determines that the Contractor failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

**§ 3.1.6** Contractor, its Subcontractors, Sub-subcontractors, suppliers, and other vendors shall bear responsibility for compliance with all applicable state and federal laws, regulations, guidelines, and ordinances applicable to the Work, including but not limited to, laws concerned with labor, equal employment opportunity, safety, minimum wages, and prevailing wage rates. Contractor further recognizes that the Owner and Architect do not owe the Contractor or any Subcontractor, Sub-subcontractor, supplier, or other vendor any duty to supervise or direct its work so as to protect such party from the consequences of its own conduct. Without limiting the foregoing, the Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

**§ 3.1.7** The Contractor shall disclose the existence and extent of any financial interests, whether direct or indirect, such Contractor may have in any Subcontractor, Sub-subcontractor, supplier, and other vendor which the Contractor may propose for the Project.

**§ 3.1.8** It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained the Contract or inferable therefrom shall be deemed or construed to: (1) make Contractor the agent, servant or employee of the Owner; or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status as described herein.

## **§ 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 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 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 preconstruction services, in reviewing 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. If, in the opinion of the Architect or the Owner, the Contractor does not make a reasonable effort to comply with the above requirements or such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation, and this causes the Architect or its Consultants to expend additional time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's and its consultants' additional services and expenses made necessary by the Contractor's failure and the Owner shall be entitled to deduct such amounts from the Contract Sum. The Architect will give the Contractor prior notice of intent to bill for additional services and expenses before additional services are performed or additional expenses are incurred.

- .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. 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.

**§ 3.2.3** 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.



**§ 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, but not later than 10 Calendar Days, 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 and limitations of the Contractor's ability to satisfactorily perform the Work or to honor an applicable warranty, and limitations of or interference with the Owner's intended use, caused by products or systems specified except when: (1) such errors, inconsistencies, omissions, differences, nonconformities, or limitations 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 its failure to properly perform the obligations of Section 3.2.2 or 3.2.3, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, nonconformities, or limitations and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, nonconformities, or limitations as part of Contractor's performance of its obligations under the Contract Documents, including the performance of Contractor's preconstruction services.

**§ 3.2.5** Notwithstanding the delivery of a survey or other documents by the Owner, prior to performing any Work, Contractor shall, if applicable, independently determine the location of all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, Contractor shall, if applicable, review the appropriate AHERA and hazardous materials surveys for the particular site(s) involved in the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform the Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

**§ 3.2.6** 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 an applicable warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for its position.

**§ 3.2.7** The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including: (1) The location, condition, layout, drainage and nature of the Project site and surrounding areas; (2) Generally prevailing climatic conditions; (3) Anticipated labor supply and costs; (4) Availability and cost of materials, tools and equipment; and (5) Other similar issues.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract

Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. Contractor shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible for any resulting loss or damage to the extent that the acceptance of Contractor's proposed alternative means, methods, techniques, sequences, or procedures would have avoided such loss or damage.

**§ 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.

**§ 3.3.2.1** Contractor shall, before any duties are performed on Owner's property where students are present, and at least annually thereafter, comply with all requirements relating to criminal history information required by Texas Education Code Chapter 22, unless Owner, in its sole discretion, determines in writing that an exception applies under Section 22.08341(c) of the Texas Education Code, subject to Contractor's and all Subcontractors' compliance with Section 22.08341(i) of the Texas Education Code. Before beginning any Work on the Project, Contractor will provide written certification and all information required by Owner to the Owner that Contractor has complied with the statutory requirements as of that date. The form of certification by the Contractor shall be supplied by the Owner and must be supplemented by the Contractor as required by law, or as requested by Owner. Upon request by Owner, Contractor will provide, in writing, updated certifications and the names and any other requested information regarding individuals to whom Chapter 22 applies, so that the Owner may obtain criminal history record information on such individuals. Contractor shall assume all expenses associated with obtaining criminal history record information. It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

**§ 3.3.2.1.1** Subcontractors or any Subcontractor entity, as defined by Texas Education Code Chapter 22, shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code Chapter 22), and by Texas law, to comply with all requirements relating to criminal history record information on their employees, agents, or applicants, to give required certifications and provide all information requested by Owner to Owner and the contracting entities, and to obtain required certifications/compliance from the subcontracting entity's subcontractors.

**§ 3.3.2.1.2** Contractor will not assign any "covered employees" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If Owner, in its sole discretion, objects to the assignment of a covered employee for any reason, including, but not limited to, on the basis of the covered employee's criminal history record information and/or insufficient qualifications, lack of experience, and the like, based on information gathered by Owner through the procurement and/or contracting processes, Contractor/Subcontractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor or any Subcontractor will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

**§ 3.3.2.1.3** For the purposes of this Section 3.3.2.1, "covered employees" means employees, agents or Subcontractors of Contractor or a Subcontractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. "Disqualifying criminal history" means: (1) For employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.08341(d), that is: conviction during the preceding 30 years (if at the time of the offense, the victim was under 18 or was enrolled in a public school) of: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of

another state that is equivalent to (a) or (b); (2) For employees of all other contracting or subcontracting entities: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: (a) conviction of a felony offense under Title 5, Texas Penal Code if at the time of the offense, the victim was under 18; (b) conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) conviction of an offense under federal law or the laws of another state that is equivalent to (a) or (b).. Owner shall be solely responsible for making the final determination of what constitutes direct contact with Owner's students and what constitutes a disqualifying criminal history.

**§ 3.3.2.2** Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with Owner's students or employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students or employees. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees or the general public. Sexual harassment is strictly forbidden. Any employee of the Contractor or a Subcontractor who is found to have engaged in any such conduct shall be subject to appropriate disciplinary action by the Contractor or Subcontractor, including immediate removal from the job site.

**§ 3.3.2.3** All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress, including wearing shirts at all times, and "badging" of Contractor's employees, Subcontractors, and all other persons carrying out the Work on the job site for identification. Contractor shall ensure that all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's name in a typeface large enough to be seen from a reasonable distance. Contractor shall furnish to Owner (and update, as appropriate) photo identification of all workers and employees.

**§ 3.3.2.4** Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's Subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal or other facility administrator. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

**§ 3.3.2.5** Contractor shall follow, and shall require all employees, agents and subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

**§ 3.3.2.6** Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's Subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property.

**§ 3.3.2.7** Any individual found by Owner to have violated the standards of conduct or restrictions set forth in Section 3.3.2 is subject to immediate removal from the job site and, in Owner's sole discretion, permanent removal from the Project or all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's Subcontractor's forces, or one serious infraction, shall constitute a material breach of the Contract justifying the immediate termination by Owner pursuant to Article 14. THE CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FROM AND AGAINST CONTRACTOR'S AND ANY SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH THE STANDARDS OF CONDUCT OR RESTRICTIONS SET FORTH IN SECTION 3.3.2, NON-COMPLIANCE WITH CRIMINAL LAW, AND NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. 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.

§ 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 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 the requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section 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.

§ 3.3.5 The Contractor has the responsibility to ensure that all materials suppliers and Subcontractors, Sub-subcontractors, suppliers, and 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 properly and efficiently coordinate the timing, scheduling, and routing of its Work with that of all trades, Subcontractors, and 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.

§ 3.3.6 Contractor acknowledges that the Work may be performed in connection with a facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the facility on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. When Work occurs in existing facilities, Contractor understands and accepts the cost and schedule impacts associated with work in existing facilities and the potential delays and disruptions to the progress of the Work and has considered such delays and disruptions in the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other Contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury. Contractor shall not request access to the Project, or request the presence of the Owner or presence of Owner's Consultants during non-working times unless the Contractor has demonstrated full-time, fully staffed performance of the Work during Regular Work Days. Owner shall not be obligated to comply with properly submitted requests.

§ 3.3.7 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.

§ 3.3.8 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.

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

#### **§ 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.

**§ 3.4.1.1** The Contractor and any Subcontractor or Sub-subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008, any individual the Contractor, Subcontractor, or Sub-subcontractor directly retains and compensates for services performed in connection with the Contract. Any Contractor, Subcontractor, or Sub-subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

**§ 3.4.1.2** Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor, and upon any Subcontractor and Sub-Subcontractor under the Contractor, to pay all laborers, workers, and mechanics employed or utilized by them in the execution of the Contract not less than the prevailing rates of per diem wages for work of a similar character in the locality at the time of construction.

**§ 3.4.1.3** In accordance therewith Texas Government Code Section 2258 et seq.; Texas Labor Code Section 62.051 et seq, the Owner has established a scale of prevailing wages which is incorporated in the Contract Documents, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Wages listed are minimum rates only, and payment greater than the prevailing wage is not prohibited. No claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rates provided herein. If no schedule of prevailing wage rates is included in the Contract Documents, then the parties shall, at a minimum, use the wage rates determined by the U.S. Department of Labor for projects located in the County in which the Project is located in accordance with the Davis-Bacon Act, 40 USC3141-3148, which can be accessed on the internet at <https://sam.gov/content/wage-determinations>, or the wage rates determined by any local contractor association, whichever is higher..

**§ 3.4.1.4** The Contractor and each Subcontractor and Sub-Subcontractor shall keep a record showing the name and occupation of each worker employed by the Contractor, Subcontractor, or Sub-subcontractor in the construction of the Work and the actual per diem wages paid to each worker. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors. These records shall be maintained and made accessible for no less than three (3) years following the date of Final Completion.

**§ 3.4.1.5** A Contractor or Subcontractor or Sub-Subcontractor who violates the requirements of Sections 3.4.1.2 or 3.4.1.3 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each laborer, worker, or mechanic employed for each calendar day or part of the day that the laborer, worker, or mechanic is paid less than the wage rate stipulated in the scale of prevailing wages applicable to the Project, as required by Texas Government Code Section 2258.023(b).

**§ 3.4.1.6** In the event of a complaint of a breach of the requirements in Sections 3.1.6 or 3.4.1, et seq, 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 or Sub-Subcontractor.

**§ 3.4.1.7** 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 or Sub-subcontractors, Owner may, at its option and without any notice required by the Contract, terminate 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.

**§ 3.4.1.8** The Contractor shall require all Subcontractors and Sub-Subcontractors to comply with the provisions of this Section 3.4.1 and its subparts.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Any such substitution request shall be made to the Architect within fifteen (15) days after execution of the Contract.

- .1** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) and when, in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests in terms of cost, time, or other considerations.
- .2** 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 for the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the Contract Time and the construction schedule; and (v) an affidavit stating the (a) proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations and will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner in sufficient time to allow the Architect and the Owner no less than twenty-one (21) Business Days for review, unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information as stated herein.
- .3** Whether or not the Owner or the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed 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 qualified by training and experience and skilled in tasks assigned to them. The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall furnish Owner, on request, resumes of the Contractor's key personnel involved in the day-to-day Work on the Project, as well as a list of all engineers, consultants, subcontractors and suppliers involved in construction. At the written request of the Owner or Architect, the Contractor shall not use in the performance of the Work any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, insubordinate, in violation of any provision in the Contract Documents, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times for the proper coordination and performance of the Work in the time periods required by the Contract. This provision is

applicable to Subcontractors, Sub-subcontractors and their employees.

**§ 3.4.4 Identification of Employees.** Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from eight feet away if requested to do so.

### **§ 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. The Contractor further warrants that the Work will be performed and completed in a good and workmanlike manner, continuously and diligently in accordance with the Contract Documents, all applicable building codes, and generally accepted standards of engineering and construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. 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 by parties other than Contractor, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation by parties other than the Contractor, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy of the portion of the Project at issue. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work or designated portion thereof within the Project, and each such individual warranty shall run from the date of Substantial Completion of the entire Work (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Contractor's warranties herein 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 within a period of one (1) year after Substantial Completion of the entire Work or designated portion thereof or, if latent defect, within one (1) year after discovery thereof by Owner. 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, such assignment to be effective no later than Final Completion, any and all third-party 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 third-party warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of any such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor's warranties shall in no way limit or abridge the warranties of the manufacturers and suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with Subcontractors and Sub-subcontractors and other providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

**§ 3.5.3** 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 address failure, errors, omissions, defects, deviations, or other nonconformities of materials, products, or workmanship, 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. The Owner will determine and assign the warranty priority as follows:

**§ 3.5.3.1** Priority 1 - A complete shutdown situation. Owner is unable to operate. Safety or loss of building contents anticipated.. 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. Elevator;
7. Roof leaks
8. Fire alarm and fire sprinkler malfunction

**§ 3.5.3.2** Priority 2 - A major component of Owner ability to operate is affected. Some aspects of the operation can continue but issue is a major problem. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 24-hours' notice.

**§ 3.5.3.3** Priority 3 – Owner operation is unaffected, but the issue is affecting efficient operation by one or more people. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 5-working days' notice.

**§ 3.5.3.4** Priority 4 – The issue is an inconvenience or annoying but there are clear workarounds or alternates. Unless shorter response durations exist in the Contract Documents, the Contractor shall provide warranty repair service within 10-working days' notice.

**§ 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, and 3.5.3 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 from the date of Substantial Completion of the entire Work and shall be in form and content otherwise satisfactory to the Owner. Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, date(s) upon which the one-year warranty will expire, and date(s) 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. Prior to termination of the one year warranty period, Contractor shall accompany the Owner and Architect on re-inspection of the Work/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-inspection. Additionally, for a period beginning at Substantial Completion of any phase of the Work and extending twelve (12) months beyond Final Completion of any phase of the Work, upon request of the Owner, the Contractor shall, not less than once a month, attend a meeting with the Owner to review the facility operations and performance to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within 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 a length of time equal to the elapsed time which occurs from the notification in writing by the Owner or a warranty claim 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** When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of: (1) an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or (2) an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or (3) such further reasonable proof as is required by the Architect. Contractor shall also certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall complete all applicable certifications required by 19 Texas Administrative Code Section 61.1036-1040.

### **§ 3.6 Taxes**

Contractor shall pay all applicable local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Owner is an exempt entity under the tax laws of the State of Texas, and Contractor shall not include in the Contract Sum or any Modification any amount for any taxes from which the Owner is exempt by virtue of its status as a governmental entity and/or as a Texas independent school district. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sale, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from its suppliers. Failure of Contractor or any Subcontractor or Sub-subcontractor to obtain Certificates of Resale from their suppliers shall make the Contractor, Subcontractor, or Sub-subcontractor responsible for absorbing the tax, without compensation from Owner. CONTRACTOR HEREBY RELEASES, INDEMNIFIES AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

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

**§ 3.7.1** After the Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, the Architect shall notify Contractor that Contractor may make and submit the applications for the building permit. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. 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 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 the 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 Contractor shall immediately inform the Architect when the Owner's participation is required, and the Architect will notify the Owner. Connections for temporary and permanent utilities, utility district/company inspections, tap charges, water meter charges, and any other similar fees assessed by jurisdictional authorities having control over the Project, as well as payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the direct responsibility of the Contractor, without reimbursement from Owner, unless otherwise agreed in writing. If the Work is new construction, then payment for temporary and permanent utility services shall be the direct responsibility of the Contractor, without reimbursement from Owner, until Substantial Completion.

**§ 3.7.1.2** After consultation with the Owner, the Contractor shall obtain all permits and approvals for itself and the Owner, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Also after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor shall coordinate processing all forms and fees with the Owner. 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 site. 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 or Sub-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. In addition, Contractor shall authorize posting of any notices concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 3.7.3** If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume all 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. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially 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 to the Owner 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 in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 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. The inclusion of any Allowance or Contingency is solely for the benefit of the Owner. Expenditure of any Allowance or Contingency may only be made with prior written approval of the Owner and according to the procedures of Article 7. Owner's authorized representative may approve any expenditure from Allowances without further Board approval. If the Allowances or Contingency are not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating Final Payment.

**§ 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.

**§ 3.8.4** When performing Work under Allowances, Contractor shall solicit and receive not less than three written proposals, unless the requirement to obtain proposals is waived by the Owner in advance, and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

### **§ 3.9 Superintendent and Project Manager**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project.

**§ 3.9.2** Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within the number of days required by the Agreement.

**§ 3.9.3** Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to the Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.



**§ 3.9.4** Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under General Conditions for such day.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, but in no case 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 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 and Final 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 Change Orders, (13) anticipated Adverse Weather Days, (14) Anticipated Instructional Days, and (15) Owner activities. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project and, upon such revision, shall be submitted to 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.

- .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.

**§ 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 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. 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.

**§ 3.10.3** 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** The Contractor shall hold weekly progress meetings at the Project site, or at such other time and frequency as are acceptable to the Owner.

**§ 3.10.5** 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.

§ 3.10.6 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.

§ 3.10.7 In addition to the requirements of the Contract Documents, the Contractor's submittal schedule shall include submittals required for Substantial and Final Completion, as described by the Contract Documents, including but not limited to (1) individual specification section-required warranties, (2) certificates, (3) statements, (4) third-party tests.

§ 3.10.8 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. Those 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 make available, at the Project site, one record copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, including concealed mechanical, electrical and plumbing items inside of the facility and underground utilities at the site, and one record copy of the approved Shop Drawings, field test records, inspection certificates or records, manufacturers' certificates, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner at all times. At the completion of the Project, all such documents and records shall be delivered to the Architect, with all changes made during construction, in an editable CAD format agreed to at the beginning of the Project along with (3) full sets of hard copy drawings and one digital copy in PDF format, for 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. These documents are to be considered part of the Work beyond the General Conditions. Other than Project identification, the documents shall not bear any professional seal or information or any reference to those firms providing professional services to the Owner, except for historical or reference purposes. This shall be completed and up to date within (30) working days from Substantial Completion and shall be a condition precedent to Final Payment.

§ 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.

§ 3.11.3 In addition to any other requirement in the Contract Documents and prior to installation, at Owner's or Architect's request, Contractor shall furnish or cause a Subcontractor or Sub-subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

### § 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 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 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. For submittals delivered by electronic transmission and received after 5:00 p.m. on a day on which the recipient's offices are open, or on a weekend, Holiday, or other day on which the recipient's offices are closed, submittals shall be deemed to have been duly served on the next day on which the recipient's offices are open.

**§ 3.12.4.2** The Contractor shall be prepared to submit color Samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) days of the award of Subcontract(s). All color Samples required for the Work shall be received by the Architect no later than sixty (60) days of the date of the approval of the Contract Sum. Once samples of all key items are received, the Architect will finalize color selections.

**§ 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, as required under the Contract Documents. At a minimum, Contractor shall submit all submittals 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 are (a) incomplete, (b) indicate an inadequate understanding of the Work covered by the Shop Drawings, or (c) indicate a lack of study and review by the Contractor prior to submittal to the Architect, the Shop Drawings will be returned, unchecked, to the Contractor for correction of these deficiencies and subsequent resubmittal. The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect and/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 of 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 approval thereof except for any such errors or omissions which are within the Architect's statutory or contractual design responsibility..

**§ 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 approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of



the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law; however, the Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawings are prepared and, if required by the Architect or applicable law, by a licensed architect or engineer.

**§ 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 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.

**§ 3.12.10.3** A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this section, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

**§ 3.12.11** 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, including clearances required by the manufacturer, by Code, or in keeping with good construction practice. 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.

### **§ 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 written 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.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly; provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. 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 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 surfaces by use of proper tools and new 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.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall, not less than one time each week, clean up by removing rubbish, including old and surplus materials, to include dirt, debris, or trash. At no time shall trash, dirt or other debris be allowed to remain in any wall cavity, ceiling plenum, crawl space or concealed space. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. At completion of the Work, the Contractor shall remove all 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. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way as a result of such activities, the Contractor or any of his Subcontractors or Sub-subcontractors shall clean and restore such surfaces to their original condition.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner, 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** The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

**§ 3.15.4** Prior to Final Completion, in addition to any additional final cleaning work specified in the Contract Documents (including the Specifications), Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect, and their designated representatives, 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. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

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

The Contractor shall pay all royalties and license fees with respect to the Contract or the Work. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, WAIVE AND RELEASE ANY CLAIMS AGAINST THE OWNER AND ARCHITECT WITH RESPECT THERETO, AND INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM ANY LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, THAT CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT 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 ARCHITECT. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless notice of such infringement is promptly furnished to the Owner and Architect in writing.

### **§ 3.18 Indemnification**

**§ 3.18.1** TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, AND CONSULTANTS, ARCHITECT, ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF), INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY ANY ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR ANY OTHER PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT

WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR, AND ANY COSTS AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE POST-JUDGMENT INTEREST RATE PROVIDED TO BE PAID UNDER THE LAWS OF THE STATE OF TEXAS.

**§ 3.18.2** IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, A SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

**§ 3.18.3**

THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDERING OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 ET SEQ.

**§ 3.18.4** 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 OR SUB-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 AN ACT OR OMISSION 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 SECTION 3.18.1.

**§ 3.18.5** THE OWNER MAY CAUSE ANY SEPARATE CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S SEPARATE CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

**§ 3.18.6** 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 SHALL PROVIDE FOR THE WAIVER OF SUBROGATION RIGHTS AGAINST THE OWNER.

**§ 3.18.7** 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 11.1 of these General Conditions.



**§ 3.18.8** The provisions of Section 3.18 in its entirety, including all of its subparts, shall survive the completion, termination, or expiration of 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 Section 3.18 and its subparts.

### **§ 3.19 Antitrust Violation**

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each Subcontractor, Sub-subcontractor and supplier. Each Subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

### **§ 3.20 Record Drawings**

**§ 3.20.1** 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 native file format agreed to at the beginning of the project along with (3) full sets of hard copy drawings 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. This shall be completed and up to date within (30) working days from Substantial Completion.

## **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.

**§ 4.1.3** Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect or its authorized representative will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues a recommendation that the Final Payment is due, and, with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2.. 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 in writing.

**§ 4.2.2** Architect or its authorized representative shall visit the site at least twice per week (or more per week when deemed necessary by the Owner or when necessary to protect Owner's interests) and at other intervals appropriate to the stage of construction, to inspect the progress, quantity and quality of the Work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents and on time. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or its authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or its authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall provide notice and shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard

Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under the Contract. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's 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, Sub-subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

#### **§ 4.2.4 Communications**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized 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, Sub-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. Notwithstanding the foregoing, Owner reserves the right to communicate directly with the Contractor and Subcontractors.

**§ 4.2.5** As further provided in the Contract Documents, 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 has 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. Testing or inspections required by this section shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code. 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, Sub-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. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or Construction Documents or nonconformance with the Contract Documents they may respectively discover (or reasonably should have discovered using ordinary diligence) and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect. If Architect or Contractor fails to disclose, in writing, any known defects in the Project or Construction Documents it discovers or reasonably should discover using ordinary diligence, the non-disclosing party (Architect and/or Contractor) shall be liable for the consequences of such defects resulting from the failure to disclose. 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 and all applicable laws, statutes, codes and requirements applicable to Architect's design services. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor,

or Separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is conducted for the general 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. If any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and/or omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

**§ 4.2.8** The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents, accompanied by all supporting documentation. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage; or mechanical equipment without Owner's prior written consent.

**§ 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.

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

**§ 4.2.13** The Owner's decisions on matters relating to aesthetic effect shall 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** Contractor is allowed a reasonable number of requests for information that are initiated by Contractor and if Contractor exceeds that reasonable amount, as determined by the Architect, in its sole discretion, Contractor shall pay the Architect's fee for review of any additional requests for information. 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. 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.

## **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 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 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. All Subcontractors shall be procured in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. If Contractor is a Construction Manager at Risk, all trade contractors and Subcontractors shall be procured in accordance with Sections 2269.255 and 2269.256 of the Texas Government Code. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its Subcontractors, and Sub-subcontractors, including those recommended or approved by the Owner.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner 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 and timely 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. When the parties agree on a proposed substitute Subcontractor or if the Owner requires use of a specific Subcontractor, then 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. "Reasonable Objection" 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, Sub subcontractor person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

**§ 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. If Owner requires removal of a subcontractor for such failure to perform, and Contractor reasonably objects to such removal, then Owner will pay any actual increase in the cost between the new subcontractor and the subcontractor replaced incurred by Contractor, taking into account any amounts which Contractor withholds or recovers in damages from the replaced subcontractor. If Contractor requests such payment from Owner, Contractor shall provide Owner with satisfactory proof of such additional costs incurred by Contractor.

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

### **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, 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. Each Subcontractor and Sub-subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in amount commensurate with the Work to be performed by the Subcontractor or Sub-subcontractor.

**§ 5.3.2** Neither the Owner nor the Architect shall be obligated to pay or to ensure the payment of any monies to Subcontractors or Sub-subcontractor due to any non-payment to the Contractor, non-payment of Subcontractors by the Contractor, or non-payment of Sub-subcontractors by Subcontractors.

**§ 5.3.3** The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a subcontract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

### **§ 5.4 Contingent Assignment of Subcontracts**

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

- .1 assignment is effective only after termination of the Contract either in accordance with Article 14 or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor;
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bonds 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, 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. Owner shall only be responsible for compensating Subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by Subcontractors prior to the date of Owner's written notice of acceptance.

**§ 5.4.2** Such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor, Sub-subcontractor, or vendor may also be liable.

**§ 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.

**§ 5.4.4** All subcontracts shall state that they will be assignable to the Bond Trustee or his designee, if funding for the Project is obtained through bond proceeds.

### **§ 5.5 Notice of Subcontractor Default**

Contractor shall promptly notify Owner and Architect in writing of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained for the Project. The Owner further reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

**§ 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** It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable site access and opportunity for introduction and storage or staging of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by

the Contract Documents. Contractor shall be responsible for coordination between Contractor's Subcontractors, Sub-subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and scope of services contained therein.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work and shall promptly report in writing to the Architect and Owner if Owner's Separate Contractors otherwise fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work and is performed in a timely manner. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually known to Contractor and are not reasonably apparent.

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

**§ 6.2.3.1** If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

**§ 6.2.3.2** If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

**§ 6.2.3.3** All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

**§ 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 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, Sub 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 and 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 Subcontractors, Sub-subcontractors, or suppliers.

### **§ 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, 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. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. 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, Construction Change Directive, or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to the Contract Sum or Contract Time due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to Contract Sum or Contract Time shall be valid unless so ordered or directed.

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

1. Cost of the Work (as defined in Article 6 of the Contract) shall be used as the basis for increasing or decreasing the amounts due to the Contractor for Fee and General Conditions (at the rates stipulated in Article 7 of the Contract) when compensating for construction phase services. Once a Change, minor change, Contingency expenditure or Allowance expenditure is approved by the Owner, the Cost of the Work is thereby adjusted and the amounts due to the Contractor for Fee and General Conditions are to be adjusted at the rates stipulated in Article 7 of the Contract. The Contractor Fee and General Conditions are not to be included within the Cost of the Work calculation. The Contractor is not entitled to additional Fee and General Conditions for self-performed Work. Notwithstanding any provision in the Contract Documents to the contrary, the Contractor's overhead and profit attributable to increases in the Cost of the Work, as evidenced by executed Change Order(s) identifying the same, shall not exceed the percentage of the Construction Manager's/Contractor Fee, and no markup shall be allowed on self-performed work.

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

Description of Subcontractor Cost of the Work Element

- A Bare Material Costs
- B Labor Hours
- C Direct Labor Costs (See Article 1 Definitions)
- D Labor Cost Burden (See Article 1 Definitions)
- E Equipment
- F Work performed by Sub-subcontractor (if any), where Sub-subcontractor Overhead and Profit shall not exceed 10%
- G Subcontractor's Overhead and Profit, attributable to increases in the cost of its portion of the Work, as evidenced by executed Change Order(s) identifying the same, shall not exceed the rate of mark-up for Subcontractor's base scope of Work (and under no circumstances shall exceed 10% of A through E)
- H Cost of the Work (Sum of A through G)

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

Description of Contractor Cost of the Work Element



- A Bare Material Costs
- B Labor Hours
- C Direct Labor Costs (See Article 1 Definitions)
- D Labor Cost Burden (See Article 1 Definitions)
- E Equipment
- F Cost of the Work (Sum of A through E)

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

- 4. 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 Contractor, upon receipt of written notification by the Owner or the Architect of a proposed item of change in the Work, shall prepare within 10 Calendar Days a Change Proposal in such form or forms as directed by the Owner or the Architect.

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

**§ 7.1.4.2** Formal Notice of Essence. Contractor recognizes and acknowledges that timely submission of a formal Change Proposal, whether or not the circumstances of the Change may be known to the Owner or available to Owner through other means, is not a mere formality but is of crucial importance to the ability of Owner to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in Requests for Information, statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of Paragraph 7.1.4.1, above, shall therefore be insufficient.

**§ 7.1.5** In accordance with Texas Education Code §44.0411 if the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other Changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect.

## **§ 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** In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or be the basis of a change in the Contract Time unless and until such change has

been authorized by a Change Order executed and issued by the Owner in accordance with the Contract Documents prior to the commencement of such modified or changed Work. 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** Contractor stipulates that 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 and attorney's fees and costs arising from a dispute with a Subcontractor or Sub-subcontractor over the Change Order.

**§ 7.2.4** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

### **§ 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:

- .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 (additional mark-ups for overhead, profit and fees will not be allowed);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee subject to the limitations of Section 7.1; or
- .4 As provided in Section 7.3.4 subject to the limitations of Section 7.1.

**§ 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 amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. all subject to the approval of the Owner. 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 Actual 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 Actual costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Actual 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 Actual 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 Actual 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.

**§ 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** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** 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.

#### **§ 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 in writing and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum, Allowances, Contingencies or Contract Time and written instruction from the Architect to proceed, 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. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

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

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 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 by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions.

**§ 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 stipulates 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..

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion and/or the date of Final Completion.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress 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 fire, governmental actions, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's reasonable control which do not arise through the action or inaction of Contractor or its Subcontractor, Sub-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 in writing by the Owner; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended in writing for such reasonable time as the Architect and Owner may determine. 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. 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 intentional interference by the Owner which materially interfere with Contractor's performance of the Work, and then only to the extent that such acts continue after Contractor's reasonable prior written 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 The Contract does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather, acts of God, supply chain issues, or market escalation. 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 7, 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 of 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.

§ 8.3.8 Concurrent Delays. For purposes of the calculations provided for in this Paragraph 8.3.8, the words "concurrent delay", "concurrently delay" or "occur concurrently" mean the portion of two or more Delays affecting the critical path to Substantial Completion that are overlapping or co-existent. Contractor's right to a Contract Adjustment of the Contract Time (pursuant to Subparagraphs 8.3.8.1, 8.3.8.2 and 8.3.8.3, below) and Contract Price (pursuant to Subparagraphs 8.3.8.4, 8.3.8.5 and 8.3.8.6, below) shall, in the case of concurrent delays, be calculated in accordance with the following:

§ 8.3.8.1 If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of Days from the commencement of the first Delay to the cessation of the Delay which ends last.

§ 8.3.8.2 If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay or Compensable Delay exceeds the number of Days of such Unexcused Delay.

§ 8.3.8.3 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which such Excusable Delay and Compensable Delay, as determined pursuant to Subparagraph 8.3.8.1, above, exceeds the number of Days of such Unexcused Delay.

§ 8.3.8.4 If an Unexcused Delay occurs concurrently with a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Change Order to the Contract Price in accordance with the Agreement shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

§ 8.3.8.5 If a Compensable Delay occurs concurrently with an Excusable Delay, the maximum period of time for which Contractor shall be entitled to a Change Order to the Contract Price in accordance with the Agreement shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Excusable Delay.

§ 8.3.8.6 If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum period of time for which Contractor shall be entitled to a Change Order to the Contract Price in accordance with the Agreement shall be the number of Days, if any, by which such Compensable Delay exceeds the number of Days of such Unexcused Delay.

## § 8.4 Liquidated Damages

§ 8.4.1 The Work to be performed under this Agreement shall be substantially completed by the date set forth in the Guaranteed Maximum Price Amendment, 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 in all phases of the Work, and that actual and direct damages would be suffered by the Owner if the Contractor does not substantially or finally complete all Work called for in the Contract Document by the specified dates. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute the agreement by Owner and Contractor that the amounts stated herein are the minimum value of the costs and actual and direct damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times of Substantial or Final Completion, that such sums are liquidated direct damages and as all not be constructed to be as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is therefore expressly agreed, as a part of the consideration inducing the Owner to execute this Contract, that the Owner may deduct from any payment(s) due to the Contractor a sum equal to One Thousand Dollars (\$1,000.00) for each and every Calendar Day beyond the date set forth in the Agreement for Substantial Completion or Final Completion of the Work

included in the Contract Documents. It is expressly understood that said sum per day is agreed upon as a real, justified, and fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially or finally completed within the agreed time, or with the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only, and in no sense shall be considered a penalty or forfeiture, said damage being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

§ 8.4.2 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion shall run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum, or if the Project is a Construction Manager at Risk Project, Guaranteed Maximum Price, is 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.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may, by mutual written agreement, be equitably adjusted.

§ 9.1.3 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.

### § 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a Schedule of Values to the Architect and the Owner before the first Application for Payment, or in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, 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 or Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Schedule of Values shall be prepared in such a manner that each major item of Work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G732 and G703 shall be used.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703 (or G732 and G703, as applicable), and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed, generally categorized by specification section, and further by type of application. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.

- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the 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, Sub subcontractors, and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Contractor agrees that, for purposes of Texas Government Code Sections 2251.021 and 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Certificate for Payment from the Architect shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code Sections 2251.021 and 2251.042.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor, Sub-subcontractor, or supplier, unless Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in Section 9.4.3 or 9.5. The retainage shall be paid with the Final Payment.

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

1. List of subcontractors,
2. Schedule of values,
3. Contractor's construction schedule (preliminary if not final),
4. If applicable, Combined Contractor's construction schedule (preliminary if not final) incorporating Work of multiple contracts, with indication of acceptance of schedule by each Contractor,
5. Products list (preliminary if not final),
6. Schedule of unit prices,
7. Submittal schedule (preliminary if not final),
8. List of Contractor's staff assignments,
9. List of Contractor's principal consultants,
10. Copies of building permits,



11. Copies of authorizations and licenses from authorities having jurisdiction for performance of the Work,
12. Initial progress report,
13. Report of preconstruction conference,
14. Certificates of insurance and insurance policies,
15. Performance and payment bonds,
16. Data needed to acquire Owner's insurance, and
17. Initial settlement survey and damage report if required

In addition to the other requirements of this Article, each subsequent Application for Payment shall be accompanied by:

1. Updated Microsoft Project schedule meeting the requirements of Section 3.10,
2. Log of Adverse Weather Days, and Instructional Days, including backup documentation,
3. Where Unit Costs are in use, measurements for payments will be made only for actual measured and/or computed length, area, solid contents, number, and weight, unless other provisions are made in the Contract Documents. Payment on a unit price basis will not be made for Work outside finished dimensions shown in the Contract Documents. Include costs for waste, overages and tolerances in the unit price for that line item, and
4. Measurements for unit price quantities will be verified by the Architect/Engineer in conjunction with the General Contractor via inspection of the Work prior to submittal of interim Applications for Payment

**§ 9.3.2** Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other 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 naming the specific materials or equipment stored and their location) 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 until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

**§ 9.3.3** The Contractor warrants that title to all Work, materials, and equipment covered by an Application for Payment will irrevocably pass to the Owner no later than the time of Owner's payment to Contractor of the invoiced cost. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No Work, material or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party. The Contractor further warrants that, upon submittal of an Application for Payment, all Work, materials, and equipment 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, Sub-subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR WORK, MATERIALS, EQUIPMENT, OR OTHER ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.



**§ 9.3.4** Contractor shall submit monthly Applications for Payment electronically, or, if requested by Owner, in writing, to both the Architect and Program Manager, if applicable, in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G732 and G703, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

**§ 9.3.5** By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials, equipment, and supplies identified in the Applications for Payment have been purchased, paid for and received; that the Subcontractors, Sub-subcontractors, and suppliers have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that Contractor has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors, Sub-subcontractors, suppliers, and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including, but not limited to, Texas Penal Code Sections 32.46, 37.09, and 37.10, and may justify termination of Contractor's Contract with Owner.

**§ 9.3.6** Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) calendar 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. Per Tex. Gov't Code Section 2252.032(f), on application to Owner for final payment and release of retainage, Owner may withhold retainage if there is a bona fide dispute between Owner and the Contractor and the reason for the dispute is that labor, services, or materials provided by the Contractor, or by a person under the direction or control of the Contractor, failed to comply with the express terms of the Contract or if the surety on any outstanding surety bond executed for the Contract does not agree to the release of retainage. Owner shall provide to Contractor written notice of the basis on which Owner is withholding retainage under this section.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect and Program Manager, if applicable, will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) certify, sign and 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) certify, sign and issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing with a detailed statement of the Architect's reasons for withholding certification and disputing in part certification in accordance with Texas Government Code Section 2251.042(a) and as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing with a detailed statement of the Architect's reason for withholding certification in whole in accordance with Texas Government Code Section 2251.042(a) and as provided in Section 9.5.1; or (4) return the Payment Application to the Contractor as provided in Section 9.3.4. Architect's written reason(s) for withholding certification shall be submitted in accordance with, and construed as, the notice required by Texas Government Code Section 2251.042 *et seq.* 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. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Contractor within forty-five (45) days of receipt of the Certificate for Payment from the Architect and Program

Manager, if applicable, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

**§ 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 in writing to the Owner by the 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, Sub subcontractors, and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors, accountants or other representatives acting in the sole interest of the Owner. By submitting the Contractor's Applications for Payment, the Contractor is certifying that the information presented is true, correct, accurate and complete; that he has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the previous Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the previous Applications for Payment; and that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanic's or material men's liens outstanding at the date of requisition; that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that except for such bills not paid but so included, there is no known basis for the filing of mechanic's or material men's liens; and that releases from all subcontractors and material men have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas causing all Work performed and for which payment has been made by the Owner to the Contractor. In certifying the Contractor's Applications for Payment, the Architect represents that he has observed the progress of the Work, critically evaluated, reviewed and certified that the amounts requested are valid and correct. The issuance of a certificate for payment shall not be a representation by the Architect that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner. The Contractor acknowledges that the Owner may authorize minor changes to the work and that those minor changes may be funded in full or in part from contingencies or allowances which are represented in Applications for Payment and supporting documents. The Owner will rely upon the accuracy of the Application for Payment and supporting documentation furnished by the Contractor in authorizing minor changes and expenditures against Allowances. Therefore, the Contractor agrees that any arithmetic error made by the Contractor in any Application for Payment and supporting documents such as contingency logs or allowance balances shall not create an obligation on the part of the Owner to pay additional sums to correct previously approved Applications for Payment. **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.**

**§ 9.4.3** The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding 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, but not limited to, 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, Sub 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;
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time; or
- .9 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.

§ 9.5.2 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 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these General Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. 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 withholding in reliance on any such Contract Document provision in good faith, or withholding, 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.

§ 9.5.5 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.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment for undisputed amounts, 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 in the Contract Documents, and shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code Section 2251.042 et seq, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents..

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors, Sub-subcontractors, suppliers 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, Sub-subcontractor, and supplier, no later than seven days after receipt of payment from the Owner and before using any part of the payment from the Owner for any other purpose, the

amount to which such party is entitled, reflecting percentages actually retained from payments to the Contractor on account of such party's portion of the Work, and shall, if requested, provide the Owner with evidence of such payment. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner, and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors, Sub-subcontractor, 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. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56, as applicable to 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, Sub 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 Sub-subcontractor or supplier. Action on the part of the Owner to require Contractor to pay a Subcontractor, Sub-subcontractor, or supplier shall not impose any liability on Owner.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

**§ 9.6.7** 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 from the Owner for Work properly performed by Subcontractors, Sub subcontractors, or provided by suppliers shall be held in trust by the Contractor for the benefit of those Subcontractors, Sub 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. The Contractor acknowledges that no lien rights exist with respect to public property.

**§ 9.6.9** Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

## **§ 9.7 Failure of Payment**

**§ 9.7.1** Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) additional days' notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may, subject to applicable law, stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not



provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

**§ 9.7.2** If the Architect does not issue a Certificate for Payment within seven (7) days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) Business Days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional Business Days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

**§ 9.7.3** 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, pursuant to the Contract, or the Owner incurs any costs or expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion and without waiving any other remedies, elect either to:

- .1 deduct an amount equal to that to 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 to which the Owner is entitled.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; 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 required of the Work have been made, approved, and posted; designated initial demonstration and instruction of Owner's personnel in the operation of Project systems has been completed; all final finishes set out 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 are 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 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 ninety (90) consecutive calendar days following the date of Substantial Completion. 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. In addition to the requirements of the Contract Documents, it is expressly understood that the establishment of Substantial Completion is subject to the following:

1. All fire alarm system components must be completed and demonstrated to the Owner.
2. Local fire marshal approval certificate must be delivered to the Owner.
3. All HVAC air and water balancing must be complete.
4. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
5. All school communications equipment and telephone systems must be complete and demonstrated to the Owner.
6. All final lockset cores and keys must be installed, and labeled with a bitting list.
7. All room plaques and exterior signage must be complete.
8. All Owner demonstrations and training must be completed, including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
9. All exterior clean-up and landscaping must be complete.
10. All final interior clean-up must be complete.

11. A final Certificate of Occupancy conforming to the requirements of the location jurisdictional authority must be signed by the Contractor and delivered to the Owner.
12. All operation and maintenance manuals must be submitted to the Architect, approved by the Architect, and delivered to the Owner.
13. Temporary facilities and utility services have been removed.
14. If applicable, Flood elevation certificate furnished and accepted by all authorities having jurisdiction, including but not limited to the County in which the Project is located.
15. If applicable, Windstorm (WPI-8) certificate furnished and accepted by all authorities having jurisdiction, including but not limited to the County in which the Project is located.

**§ 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, using the Owner's Project Management Software, prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to Final Payment. The punch list shall contain an area or room description, and a photograph of each deficiency listed in the punch list and a space for contractor and architect to individually indicate the date of the correction and observation of the correction, respectively. 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 Contractor's Project Manager or Superintendent 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 Contractor. This procedure will produce a Final Punch List that has the Contractor's, Architect's, Consultant's and Owner's comments incorporated in only one list using the Owner's Project Management Software. 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 its consultants and will have been expected to have taken appropriate 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, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect 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 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, sign, and issue to Owner 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 Final Punch 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 work to correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion shall be completed by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. 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 ninety (90) 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 by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions, 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. The Contractor's request for retainage payment 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.

## **§ 9.9 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 that the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work 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. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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

**§ 9.9.3** Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents nor shall it constitute evidence of Substantial Completion or Final Completion.

**§ 9.9.4** In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if the Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** 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 the Architect's agreement and approval, the Architect will promptly prepare, sign, and issue a Owner's Certificate of Final Completion and final Certificate for Payment certifying to the Owner that 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, including all retainage, 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 certifications, in determining the payment to be made to Contractor. Final Payment shall be made by the Owner in accordance with Owner's regular schedule for payments. The 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 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) using AIA Document G706, 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) evidence satisfactory to Owner that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) using AIA Document G707, Consent of Surety, if any, to Final Payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts currently withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A, notarized subcontractor lien releases, and other receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract or the Work, to the extent and in such form as may be designated by the Owner. If a Subcontractor, Sub-subcontractor, or supplier refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7.
- .2 Final List of Subcontractors (AIA Document G705);
- .3 Contractor's certificate(s) required by 19 Tex. Admin. Code 61.1036-61.1040, as applicable;
- .4 Contractor's and other required warranties, organized as required elsewhere in the Contract Documents;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 Record drawings and "as built" drawings as required elsewhere in the Contract Documents.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final Payment shall be

paid by the Owner to the Contractor within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment, unless otherwise delegated.

Owner, Architect, Contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable school facility standards required in 19 TAC Section 61.1040 subsections (d) and (g)-(k). 19 TAC Section 61.1040(f).

Per 19 TAC Section 61.1040(6)(f)(C), Contractor shall certify the following:

(i) Process certifications. To ensure construction quality and performance of contract terms, the Contractor and prime subcontractors, if applicable, shall certify compliance that the Project has been built in conformance with the contract documents.

(ii) Certifications related to construction quality standards under subsection (j) of 19 TAC Section 61.1040.

To ensure compliance with construction quality standards, the Contractor and prime subcontractors, if applicable, shall certify compliance at the completion of a capital improvement project that the Project has been built in conformance with the contract terms and performance standards specified by the Contract Documents for the Contractor and for any of its subcontractors or subconsultants of any tier, which shall include certification of compliance with any subsequent change order documents approved by the Owner and Architect.

Where a third-party code compliance officer is required by subsection (j) of 19 TAC Section 61.1040 to ensure that a third-party code compliance officer does not find any violations of the provisions of the required construction codes identified in subsection (j)(1) of 19 TAC Section 61.1040 that are not enforced by a state or local authority having jurisdiction, Owner shall require that a third-party code compliance officer issue a third-party certificate of occupancy. Where a local authority having jurisdiction enforces some of the required construction codes, a third-party code compliance officer shall not issue a third-party certificate of occupancy until either the local authority having jurisdiction has issued a certificate of occupancy or the local authority having jurisdiction indicates in writing to the third-party code compliance officer that the local authority having jurisdiction does not issue certificates of occupancy.

Certifications related to safety and security standards under subsection (k) of 19 TAC Section 61.1040. To provide a safe and secure environment, the Contractor and prime subcontractors, if applicable, shall certify compliance that the Project has been built in reasonable accordance with the safety and security directives provided by the school district and reflected in the Contract Documents prepared by the Architect.

Special provisions for a Construction Manager-Agent. For projects that use the construction manager agent contracting method established in Texas Government Code Chapter 2269, Subchapter E, the Construction Manager Agent and each construction prime contractor must provide certification in accordance with clause (j) of 19 TAC Section 61.1040, and each shall certify the scope of work for which they are contractually responsible.

**§ 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, corrected, and accepted, less retainage. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of Claims by Owner. 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, Sub-subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the “Manual of Accident Prevention in Construction”, published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration (“OSHA”) 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor’s performance of its obligations under Article 10 shall not relieve any Subcontractor, Sub-subcontractor, supplier, or any other person or entity, of their responsibilities for the safety of persons and property and for compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, nor shall any such party be relieved from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards.

§ 10.1.2 Contractor’s employees, agents, Subcontractors, Sub-subcontractors, suppliers or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner’s premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner’s premises.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner’s premises or performing the Work. Contractor will remove any of its employees, agents, Subcontractors, Sub-subcontractors, suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students, and other persons on or off Owner’s premises who may be affected thereby, including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational or other facility;
- .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, a Sub-subcontractor, or a supplier; and
- .3 other property at the site or adjacent thereto, such as other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall also do all things necessary to protect the Owner’s premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason. Contractor’s obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes full possession of and occupies that portion of the Project.

§ 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. The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect..

**§ 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 load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8** The Contractor shall 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 or to other portions of the Project. The Contractor shall be responsible for performing all repairs and/or replacement of any Work that results from foreseeable weather conditions, and shall also be responsible for all repairs and/or replacement of any other portions of the Project to the extent such repairs and/or replacement are required as a result of Contractor's failure to properly secure the Work or otherwise take precautions with respect to the Work as required under this Section 10.2.8.

**§ 10.2.9 Injury or Damage to Person or Property**

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts and omissions 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. Provided, however, Contractor understands that, under Texas law, Owner has tort immunity.

**§ 10.2.10** 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.

**§ 10.2.11** 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 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 notify the Owner and Architect of the condition. The Contractor shall have no responsibility to initially discover the presence of such hazardous materials on the project site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Contractor or the Contractor's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Contractor places or allows such hazardous materials to be placed on the Project site. If Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 10.3.2 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 within a reasonable time to be determined upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion to the extent of any delay directly attributable to efforts to remove or safely contain a material or substance as required hereunder.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all actual cost and expense thereby incurred.

### § 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** As part of submittals under the section in the Project Manual related to Contract Closeout, and prior to Final Payment and payment of retainage, the Contractor and, as applicable, each Subcontractor, Sub-subcontractor and supplier shall submit all applicable Safety Data Sheets (SDS) and a notarized statement on company or other official letterhead certifying to the best of their information, knowledge and belief, that no lead, asbestos, asbestos-containing (or, under reasonably foreseeable conditions, releasing) materials or PCBs 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, have been used or incorporated into the Work, and lead or lead-bearing (or, under reasonably foreseeable conditions, releasing) materials have not been incorporated into potable water systems. As used in this statement, the term “potable water systems” shall include, 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. The notarized statement shall further state that, should any such materials be found in any of the Work in contravention of the notarized statement, then Contractor shall be responsible for taking all necessary corrective action to remove those materials from the Work, at no additional cost to the Owner. The notarized statement shall be dated, shall reference this specific Project, and shall be signed by not less than two (2) officers of the Contractor or the applicable Subcontractor, Sub-subcontractor, or supplier.

**§ 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, its Subcontractors, Sub-subcontractors, or suppliers 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 the Contract Documents 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 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** Final Payment and payment of retainage shall not be made until the information and notarized statements required under Section 10.5 have been received by Owner.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, its trustees, officers, employees, agents, and representatives, Architect, and Architect's consultants, the Program Manager, if applicable, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Without limiting or waiving Owner's right to earlier notice of any modification, termination, or expiration of insurance coverages as provided in the Contract Documents, immediately upon the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation, expiration, or other lapse. Upon receipt of written notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date of Substantial Completion and such dates of Owner responsibility shall be documented in the Certificate of Substantial Completion. If Owner occupies or uses any completed or partially-completed portion of the Work at any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, if any, Contractor's builder's risk shall be primary and non-contributory.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If the Contract Documents specify, or the Architect or Owner requests, that certain Work shall not be covered until the Architect has had an opportunity to examine such Work, the Contractor shall notify the Architect in writing a minimum of 48 hours prior to covering up any such Work in progress in order for the Architect to make proper field observations of the Work in place. The Contractor shall place no concrete, fill-in ditches, or cover up walls or ceilings without first contacting the Architect as noted above and receiving approval. If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered and the Contract Documents do not specify otherwise and the Architect or Owner 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 may be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate for the actual cost to uncover and replace such Work. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, and replacement, 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. The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire 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 nonconforming condition. The Owner shall give such notice promptly after discovery of the condition. 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. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

**§ 12.2.2.1.1** If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may, but is not obligated to, also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor

does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

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

**§ 12.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to that corrected Work.

**§ 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 one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 12.2.6** Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or by defects in the Work.

**§ 12.2.7** The provisions of this Section 12.2 apply to Work done by Subcontractors and Sub-subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2 shall not apply to corrective work attributable solely to the acts or omissions of any Separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2 to the extent not covered by insurance shall be borne by Contractor.

**§ 12.2.8** If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, then an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such agreement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The agreement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Montgomery County, or, if no county is specified, then the county in which the Owner's main administrative office is located.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other

party in respect to covenants, agreements, and obligations contained in the Contract Documents. Except as expressly provided otherwise in the Contract Documents, neither party to the Contract shall assign the Contract, in whole or in part, without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

### **§ 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.

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals, which shall be included in the Cost of the Work. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner 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 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.

**§ 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 of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 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, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect, with copy to the Owner.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### **§ 13.5 Interest**

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by Texas Government Code Section 2251.025. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from

the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

### **§ 13.6 Equal Opportunity in Employment**

**§ 13.6.1** The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall not discriminate against any employee or applicant for employment in the performance of the Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, age (except where based on a bona fide occupational qualification), disability, sex except where based on a bona fide occupational qualification), national origin, ancestry, or any other basis protected by law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies. Contractor further agrees that every subcontract entered into for the performance of the Agreement will contain a provision requiring non-discrimination in employment herein specified. Breach of this covenant may be regarded as a material breach of the Agreement.

**§ 13.6.2** The Contractor and the Contractor's Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, disability, sex, national origin, ancestry, or any other basis protected by law.

### **§ 13.7 Records**

**§ 13.7.1** Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

**§ 13.7.2** If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

**§ 13.7.3** Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

**§ 13.7.4** Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

**§ 13.7.5** In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

### **§ 13.8 Proprietary Interests and Confidential Information**

**§ 13.8.1** Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

**§ 13.8.2** Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.



**§ 13.8.3** The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, certain open records laws and other disclosure requirements, including, but not limited to, the Texas Public Information Act, Texas Government Code Chapter 552, et seq., subpoenas, and court orders. Nothing in the Contract shall be construed as prohibiting Owner from disclosing any information related to or in connection with the Contract in accordance with such requirements, and Contractor hereby waives any claim against and releases from liability Owner, its trustees, officers, employees, agents, and attorneys with respect to any such disclosure.

**§ 13.9** The Architect may appoint an employee or other person to assist it 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.

**§ 13.10** The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

**§ 13.11** Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Contractor hereby certifies and verifies that neither it, nor any of its affiliates, subsidiaries, or its parent company, if any (the "Contractor Companies"), boycott Israel, and Contractor agrees that it and the Contractor Companies will not boycott Israel during the term of the Contract. For purposes of the Contract, 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 specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**§ 13.12** In accordance with Texas Government Code § 2269.054, the Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization.

It is expressly understood that this Contract is not written for the benefit of third parties.

#### **§13.12 Certificate of Nonsegregated Facility**

**§13.12.1** This section is applicable to Contracts and Subcontracts exceeding \$10,000.00 that are not exempt from the provisions of the Equal Opportunity Clause.

**§13.12.2** 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 \$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 nonsegregated facilities. A certification of nonsegregated facilities, as required by the May 19, 1967 Order (32 FR 7439, May 19, 1967) on elimination of segregated facilities, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or



annually). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.11.

**§ 13.13** In accordance with Texas Business & Commerce Code § 116.0001, as soon as practicable after beginning construction of the project, Contractor shall visibly post the following information at the entrance to the construction site: (1) the name and contact information of the Contractor; and (2) a brief description of the project.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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 of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, then, after the applicable time period, the Contractor may, upon ten (10) business days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

**§ 14.1.4** If the Work is stopped for a period of ninety (90) 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 material to the progress of the Work, the Contractor may, upon twenty (20) additional business days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 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, Sub subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors, Sub subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and subject to any prior rights of the surety, 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. Any further payment shall be limited to amounts earned to the date of termination.

**§ 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 of the Contract Sum, the Contractor and/or its Surety 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.

**§ 14.2.5** The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

**§ 14.2.6** As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time may, by mutual written agreement, 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 may include profit, upon written agreement of the parties. No adjustment shall be made to the extent

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

### **§ 14.4 Termination by the Owner for Convenience**

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

**§ 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 Owner shall pay the Contractor for Work properly executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

**§ 14.4.4** Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

#### **§ 14.5 Termination by the Owner for Non-Appropriation**

**§ 14.5.1** If the Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, the parties agree that the Contract is a commitment of Owner's current revenue only. As such, notwithstanding any contrary provision of the Contract, any payment obligation(s) of Owner created by the Contract shall be conditioned upon the availability of funds that are duly appropriated and allocated for such purpose. If such funds are not available, as determined by Owner in its sole discretion, Owner shall have the right to terminate the Contract, without default, penalty, or further obligation or liability to Contractor, effective at the end of the period for which such funds are available. In the event this provision is exercised, Owner shall provide written notice of non-appropriation, specifying the effective date of termination, to Contractor as soon as is reasonably practicable.

**§ 14.5.2** Upon receipt of notice from the Owner of such termination for non-appropriation, 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.

**§ 14.5.3** In case of such termination for non-appropriation, to the extent that funds have been duly appropriated and allocated for such purpose and are available, the Owner shall pay the Contractor for Work properly executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

### **ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of the Contract terms, a change in the Contract Time, or other relief with respect to the terms of the Contract, the Work, or the Project. The responsibility to substantiate Claims shall rest with the Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

##### **§ 15.1.2 Time Limits on Litigation**

The Contractor shall commence all litigation against the Owner 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, if any, and within the period specified by applicable law, but in any case not more than 8 years after the date of Substantial Completion of the Work, unless extended in accordance with Texas Civil Practice & Remedies Code Section 16.009. The Contractor waives all claims not commenced in accordance with this Section 15.1.2.

### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the Owner and to the Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim or within twenty-one (21) calendar days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety-one (91) days after the occurrence of the event giving rise to such claim or within ninety-one (91) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

§ 15.1.3.2 Claims by 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 Owner. 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 undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time may 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 Or an Increase in the Contract Sum

If the Contractor wishes to make a Claim for additional cost or for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if otherwise delegated and provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution or other legal remedies as provided for in the Contract Documents. Under no circumstances shall a claim for additional cost or for an increase in the Contract Sum resulting from supply chain issues or market escalation be approved by Owner.

### § 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 the 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. Additionally, any Claim for additional time based on adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

1. Weather data in the table below shall form the baseline for establishing Anticipated Adverse Weather Days per month associated with the Project schedule duration.

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

a. 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. When the Project requires work in an occupied building, Instruction Days in the table below shall form the baseline for establishing Instruction Days per month associated with the Project schedule duration.

Anticipated Instruction Days	
Month	Total of Instruction Days Allowed
January	0
February	0
March	0
April	4
May	4
June	0
July	0
August	0
September	0
October	0
November	0
December	0

a. The Anticipated Instruction Days shall be submitted with the Contractor's Construction Schedule for documenting future Instruction Days and is considered to be part of the Project duration forming the Contract Time.

### 3. Submission for Time Extension

a. Although the Contractor is required to document the occurrence and effect of Adverse Weather or Instruction Days 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 and Instruction 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 or Instruction Days and the impact on Work activities.

c. To determine if a given month experienced Adverse Weather Days or Instruction Days, the number of actual Adverse Weather Days or Instruction Days is subtracted from the Anticipated Adverse Weather Days or Anticipated Instruction Days. If the number of Adverse Weather Days or Instruction Days is greater than the Anticipated Adverse Weather Days or Anticipated Instruction Days for a given month, then the Contractor has experienced unusually severe weather or Work disruption for the given month. If the number of Adverse Weather Days or Instruction Days is less than the Anticipated Adverse Weather Days or Anticipated Instruction Days for a given month, then the Net Days shall accumulate to the remaining months and shall be treated as float to the Project. Float time contained in the Contractor's Construction Schedule is not for the exclusive benefit of the Contractor or the Owner, but belongs to the Project and may be consumed by either party as needed on a first-used basis.

d. THE DETERMINATION THAT UNUSUALLY SEVERE WEATHER OR INSTRUCTION DAYS 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 OR INSTRUCTION DAYS. Further analysis is necessary to determine if the unusually severe weather or Instructional Days 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 or Instructional Days delayed the Contract, a Contract Modification shall be issued.

e. Claims for increase in the Contract Time shall set forth in writing the detail noting the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall bear the entire economic risk of all weather delays and Instruction Days 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 with each Application for Payment and shall include documentation demonstrating the nature and duration of the delays or disruptions. Where appropriate, a revised construction schedule indicating all the activities affected by the circumstances shall be included with the documentation.

f. The parties agree that the reconciliation of the change attributable to Adverse Weather or Instruction Days will occur at the time of Project Final Completion.

**§ 15.1.6.3** No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors, Sub-subcontractors, or suppliers or otherwise under Contractor's control. Claims for extension of time may only be considered because of Adverse Weather Days, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Claims for extension of time because of hindrances or delays not the fault of either Contractor or Owner shall be considered, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Unless otherwise delegated, Board approval shall be required for any extension of time. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

**§ 15.1.6.4** Notwithstanding any provision herein to the contrary, if the Contractor desires to make a one-time Claim for costs directly resulting from permit delays, this Section 15.1.6.4 shall apply. Any Claim for costs directly resulting from permit delays may only begin accruing following the expiration of the anticipated permit release duration stated in the procurement solicitation, and regardless of the duration stated in the procurement solicitation, only if the duration from Notice to Proceed to release of permit exceeds 90 Calendar Days. A Claim under this Section 15.1.6.4 shall be made no later than twenty-one (21) calendar days after the permit has been released. In making such a one-time Claim for costs directly resulting from permit delays, the Contractor shall be limited to a percentage change rate per day for any claimed actual additional costs, regardless of actual cost to the Contractor or any subcontractor. Claims for Contractor's general conditions will not be allowed. If the Claim is approved, the percentage change rate per day shall be determined as follows: Reference source is the Building Cost Index (BCI)



change as reported by Engineering News Record (ENR) at the following link ([https://www.enr.com/economics/historical\\_indices/Dallas](https://www.enr.com/economics/historical_indices/Dallas)). Using the BCI published in the month preceding the due date of the proposals as the baseline value, average the next three (3) months of subsequently reported data; divide the three (3) month average by the benchmark value, subtract one, and convert to percentage; divide the result by ninety (90) days to determine the daily change limit of any actual costs. Additionally, in making a Claim for additional actual costs under this section, the Contractor agrees that the Owner, Architect, or their respective agents is thereby entitled to review all (related or unrelated to the Claim) bids, proposals, quotes, quantity take-offs, and executed subcontractor agreements for the Project and to contact subcontractors to verify facts pertaining to same. Owner shall be entitled to a credit if the Owner, Architect, or their respective agents' inspection of all bids, proposals, quotes, quantity take-offs, and subcontractor agreements indicate a variance in favor of the Owner. The completion of the Owner's inspection and issuing of a report of the determination of finding relating to a Claim under this section is a precondition to the commencement of time limits for Claims stated in § 15.2. Any Claim under this section 15.1.6.4 shall be subject to the review and approval/rejection procedures outlined in Article 8 and 15.

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor waives all Claims against Owner for consequential damages arising out of or relating to this Contract, including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

#### **§ 15.2 Resolution of Claims and Disputes**

**§ 15.2.1** Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date Final Payment is due, unless thirty (30) days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

**§ 15.2.2** The Architect will review Claims and within ten (10) days of the receipt of a Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

**§ 15.2.3** In evaluating Claims, the Architect 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 Architect in making a written recommendation.

**§ 15.2.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days (or in the case of Owner, ten (10) business days) after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

**§ 15.2.5** Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

**§ 15.2.6** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### **§ 15.3 Alternative Dispute Resolution**

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

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

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

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1.

#### § 15.4 No Arbitration

Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. Nothing in the Contract shall be construed as a waiver or relinquishment of any governmental immunities or defenses on behalf of Owner, its trustees, officers, employees, or agents as a result of the execution of the Contract or performance of the functions or obligations described therein.

§ 15.6 In any adjudication under this Agreement, attorneys' fees may be awarded as provided by law.

#### ARTICLE 16 ADDITIONAL PROVISIONS

§ 16.1 These general conditions incorporate by reference the following documents:

Exhibit A: Wage Rate Determination

**New Caney ISD Checklist**  
**Vendor Forms V3E (On Campus, Possibly alone with kids, or > than 5 days)+E.D.G.A.R.**

**Contractor: \_\_\_\_\_**

**Initial by each item before sending back**

1 \_\_\_\_\_ Checklist

2 \_\_\_\_\_ Student Involvement Form

- Department Signature & Bookkeeper signature

3 \_\_\_\_\_ Independent Contract Agreement is complete **(OR)** An equivalent Contract Agreement has been submitted

- All blanks are completed with required data (date of services and price is a MUST)
- Contractor signature
- Contract recommended by signature is complete (who on the campus is requesting their services)

4 \_\_\_\_\_ Vendor Information Form

5 \_\_\_\_\_ Procurement Category form

6 \_\_\_\_\_ W-9 Form

- Document is complete
- If not present, does the district have a current copy on file? (Information hasn't changed)

7a/7b \_\_\_\_\_ CIQ (instruction page included)

- Is the CIQ complete per directions included in packet?

8 \_\_\_\_\_ Suspension and Debarment Form

9 \_\_\_\_\_ Certificate of Residency

10 \_\_\_\_\_ E.D.G.A.R. Certifications

11 \_\_\_\_\_ Felony Conviction Notification

12a/12b \_\_\_\_\_ DPS CCH form (instruction page included)

13 \_\_\_\_\_ Criminal History Authorization form

**\*ONLY COMPLETE IF APPLIES – SENDING SUBCONTRACTORS OR MORE THAN 4 EMPLOYEES \***

14 \_\_\_\_\_ Certification of Criminal History (General Contractor with employees or Subcontractors)

- The General Contractor is a company that sends various employees OR subcontractors out to the district, the company signs forms related to their obligation to maintain criminal history checks on employees and subcontractors.

**Initial by each item before sending back**

## Independent Contractor (Vendor) / Student Involvement

This form allows you to determine what vendor packet is appropriate. **PICK ONLY ONE OPTION!**

**V1.** The contractor (vendor) does not come on campus & only sells services or products from afar. The minimal campus contact is limited to supervised deliveries & pick-ups at most. \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_ (staff signature)

\_\_\_\_ (Independent Contractor signature)

COMPLETE  
VENDOR PACKET  
V1 or V1E  
(NO EXPOSURE)

**V2.** The contractor will **ONLY** be around a group of students (never alone with students) **BUT ALWAYS WITH** a sponsor /staff member present and **NO MORE THAN FIVE DAYS?** \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_ (staff signature)

\_\_\_\_ (Independent Contractor signature)

COMPLETE  
VENDOR PACKET  
V2 or V2E

**MAINTENANCE/GROUNDS - TECHNOLOGY - FACILITY PLANNING - TRANSPORTATION - POLICE**  
**\*\*\* ONLY WHEN APPLICABLE \*\*\***

**SOME DEALINGS MAY WARRANT VENDOR PACKET (V3)**

**V2 (b).** The contractor may be here **MORE THAN FIVE DAYS** and may through the performance of their services be around a group of students but will **NEVER** be with students alone. **This contractor will ALWAYS be accompanied by a Professional Employee.** \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_ (staff signature)

\_\_\_\_ (Independent Contractor signature)

COMPLETE  
VENDOR PACKET  
V2 or V2E

**V3.** The contractor has the opportunity to be **ALONE** or with a group of students or will be here **MORE THAN 5 DAYS IN AGGREGATE** with students on campus? \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_ (staff signature)

\_\_\_\_ (Independent Contractor signature)

COMPLETE  
VENDOR PACKET  
V3 or V3E  
INCLUDES  
BACKGROUND CHECK

STATE OF TEXAS                      §  
COUNTY OF MONTGOMERY        §

WHEREAS, the Independent Contractor represents that the Independent Contractor has extensive experience as a(n) \_\_\_\_\_(AREA OF SPECIALIZATION); and

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, NCISD and the Independent Contractor agree as follows:

1.1. *Purpose:* The Independent Contractor is hereby contracted to perform the services that NCISD specifies below on an as-needed basis, including but not limited to the following:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

1.8 The Independent Contractor agrees to comply with all laws, regulations and rules of the United States, the State of Texas, the Texas Education Agency, the Texas Commissioner of Education, and NCISD, concerning the provision of services to NCISD and its students, including but not limited to, duties with respect to confidentiality of student records, duties to report abuse or neglect of students, and duties regarding the discipline and management of students.

1.9 The Independent Contractor affirmatively represents and avers that the Independent Contractor is fully qualified, by training or experience, to provide the services contemplated by this Agreement, and possesses all valid certifications and licenses required by any governmental entity, and has met all required registration requirements, that are necessary to authorize the Independent Contractor to perform the professional services contemplated by this Agreement.

1.10 The Independent Contractor, prior to performing any services to NCISD under this Agreement, shall provide to NCISD copies of all licenses and certifications that confirm the representations and affirmations contained herein.

## II. RELATIONSHIP OF PARTIES

2.1. The Parties to this Agreement intend that the Independent Contractor, in performing the contracted services, will act and operate solely as an independent contractor. As such, the Independent Contractor shall maintain control of the work and the manner in which it is performed, and shall be free to accept and perform work for third-parties during the term of this Agreement.

2.2. The Independent Contractor acknowledges and agrees that the Independent Contractor is not an employee of NCISD and, accordingly, is not entitled to any benefits, insurance, or other privileges available to NCISD employees. The Independent Contractor shall not represent to any person or entity that the Independent Contractor is an employee or agent of NCISD. NCISD will not deduct any social security or income taxes from the payments made to the Independent Contractor as set forth in Section IV. NCISD will issue the Independent Contractor a 1099-Misc. form reflecting NCISD's compensation from NCISD and the Independent Contractor will be liable for any and all worker's compensation payments and federal, state, and local employment, sales, use, excise, and other taxes arising out of the Independent Contractor's receipt of compensation under this Agreement.

## III. TERM; EXTENSION; TERMINATION

3.1. *Term:* The term of this Agreement shall begin on \_\_\_\_\_(DATE) and end on \_\_\_\_\_(DATE) unless earlier terminated in accordance with the terms of this Agreement.

3.2. Either party to this Agreement may terminate the Agreement at any time for any reason or for no reason. Good cause is not required for either party to terminate the Agreement. The terminating party shall provide written notice of termination to the other party. The parties agree that no property rights or interests under the Texas or United States Constitution are created by this Agreement.

3.3 Upon the termination of this Agreement, the Independent Contractor will deliver to NCISD all data, documents and other information pertaining to NCISD or NCISD's students in the Independent Contractor's possession, custody or control, within three (3) NCISD business days following the termination of this Agreement.

3.4 In the event this Agreement is terminated during the contract term, the Independent Contractor shall solely be entitled to payment for those services actually performed through the date of termination. **ALL OTHER DAMAGES OF ANY KIND ARE HEREBY WAIVED BY THE INDEPENDENT CONTRACTOR.** Without limitation, Independent Contractor shall not be entitled to any other compensation from NCISD, and shall not be entitled to any consequential damages, damages for lost opportunity, or damages for lost profits of any kind.

## IV. COMPENSATION

4.1 The Independent Contractor will submit invoices to NCISD on a monthly basis for services rendered pursuant to this Agreement. Without limitation, the total compensation payable to Independent Contractor during the term of this Agreement shall not exceed the sum of \$\_\_\_\_\_. Payment from NCISD shall be made within 30 days of service and receipt of an invoice. (for **District-Wide Agreements** that multiple campuses/departments can use: Please note "See Attached" in the space above and attach a detailed "**Fee Schedule**" that district & campuses can reference regarding the cost of individual services. As services are scheduled, a QUOTE shall be sent to the campus/department that is requesting the service. This Agreement shall



be referenced on ALL quotes. In this case, invoices shall be sent individually to the campus/department as services are rendered and as they are originally quoted with regards to the “Fee Schedule” attached to this Agreement)

4.2 The Independent Contractor is responsible for payment of all State, Federal, foreign, or local taxes, including income tax, withholding tax, social security tax, or pension contributions, on the funds distributed to the Independent Contractor by NCISD. NCISD is not responsible for payment of taxes or penalties applicable to nonpayment or underpayment of taxes. The Independent Contractor is further responsible for payment of any and all expenses, insurance premiums, including errors and omissions policies, medical insurance policies, or life insurance policies that the Independent Contractor may need or desire to perform services under this Agreement.

4.3 The compensation set forth in this Section IV is the sole compensation available to the Independent Contractor for services performed under this Agreement.

4.4 All amounts to be paid under this Agreement are specifically contingent on NCISD’s receipt of funds from the State of Texas and/or the federal government.

#### **V. WORK STANDARDS/STANDARD OF CARE**

The Independent Contractor shall control the method, means and details of the work performed under this Agreement. The Independent Contractor shall perform services under this Agreement in conformance with, and will adhere to, the standards of professional skill, care, and quality ordinarily provided by members of the Independent Contractor’s profession in Texas performing the same or similar services, shall perform all services required under this Agreement in a manner consistent with those standards of care, and shall provide services under this Agreement in a good and workmanlike manner.

#### **VI. MATERIALS AND EQUIPMENT**

The Independent Contractor shall furnish, at the Independent Contractor’s own expense, all materials, equipment, and supplies necessary for the Independent Contractor to perform services under this Agreement.

#### **VII. INSURANCE/INDEMNIFICATION**

7.1 The Independent Contractor shall maintain a policy or policies of liability insurance with coverages (including, but not limited to, professional liability coverage) that is/are sufficient to protect NCISD and the Independent Contractor against any claims, demands, causes of action, or damages arising out of the Independent Contractor’s performance of services under this Agreement. The limits of liability of such policy(ies) shall be in an amount acceptable to NCISD. Such policy(ies) (i) shall be written by companies authorized to issue such insurance policy(ies) in the State of Texas, (ii) shall and must name NCISD as an additional insured, and (iii) shall contain no specific limitations on the coverage afforded additional insureds.

7.2 THE INDEPENDENT CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, SAVE, AND DEFEND NCISD AND NCISD’S OFFICERS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, AND DAMAGES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES AND EXPENSES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PROVISION OF SERVICES BY THE INDEPENDENT CONTRACTOR, OR ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE INDEPENDENT CONTRACTOR.

#### **VIII. GENERAL AND ADMINISTRATIVE PROVISIONS**

8.1 *Assignment.* The Independent Contractor shall have no right to transfer or assign the Independent Contractors rights or obligations under this Agreement.

8.2 *No Waiver.* The failure or delay in the enforcement of the rights detailed in this Agreement by NCISD shall not constitute a waiver of those rights or be considered as a basis for estoppel. NCISD may exercise its rights under this Agreement despite the delay or failure to enforce those rights.

8.3 *Paragraph Headings.* The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect whatever.

8.4 *Use of Pronouns.* The use of the neuter singular pronoun to refer to any Party described in this Agreement shall be deemed a proper reference whether the Party is an individual, a partnership, a corporation, a governmental entity or group of two or more individuals, partnerships or corporations. The grammatical changes required to make the provisions of this Agreement applicable to corporations, partnerships, governmental entities, individuals, groups of individuals or to females as well as males shall, in all instances, be assumed as though in each case fully expressed.

8.5 *Governing Law/Venue.* This Agreement shall be subject to, construed in accordance with, and governed by the laws of the State of Texas without regard to its conflict of laws principles, the choice of law being the laws of the State of Texas. It is expressly agreed that the venue of any cause of action involving or related to this Agreement shall be in the District or County Courts of Montgomery County, Texas located in Conroe, Montgomery County, Texas, and any objections to such venue are hereby irrevocably waived. Any and all obligations or payments are due and payable in Conroe, Montgomery County, Texas.

8.6 *Dispute Resolution/Grievance Procedure.* The Independent Contractor agrees to participate in mediation with NCISD as a condition precedent to any action or lawsuit being initiated against NCISD arising under this Agreement. The Independent Contractor also agrees to participate in NCISD's internal grievance procedures as set forth in NCISD Board Policy as a condition precedent to any action or lawsuit being initiated against NCISD arising under this Agreement.

8.7 *Severability.* If any provision of this Agreement shall, for any reason, be held to be in violation of any applicable law, or if any provision of the Agreement is held to be unenforceable, the invalidity of such a specific provision in this Agreement shall not be held to invalidate any other provisions in this Agreement, which other provisions shall remain in full force and effect unless removal of the invalid provisions destroys the legitimate purposes of this Agreement, in which event this Agreement shall be cancelled.

8.8 *Entire Agreement.* This Agreement shall represent the entire agreement by and between NCISD and the Independent Contractor and shall supersede any prior understandings or agreements between the Parties. This Agreement may not be amended except by written amendment duly executed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

**Please check any of the following that apply:**

Current NCISD Employee: YES ☐ NO ☐ TRS (*Teacher Retire System*) Member: YES ☐ NO ☐

\_\_\_\_\_  
*Independent Contractor*

\_\_\_\_\_  
*Independent Contractor's Signature*

\_\_\_\_\_  
*Date*

**THIS SECTION MUST BE COMPLETED BY THE CAMPUS OR DEPARTMENT (PRIOR TO SENDING TO CENTRAL OFFICE)**

☐ Continuing Duties (On-Going)

☐ Alone With Students (Non Supervised Contact)

**FUND DESIGNATION:** ☐ General Fund

☐ Title

☐ Campus Activity

☐ Student Activity (Club)

\_\_\_\_\_  
*Administrator Initiating Contract*

\_\_\_\_\_  
*Administrator's Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_ (if initialed by Director of Purchasing) **Liability Insurance Coverage is waived.**

\_\_\_\_\_  
*Toni Bullock, Director of Purchasing*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Brandy Chelette, Executive Director of Finance*

\_\_\_\_\_  
*Date*

**District Use Only**

**Please Check One:**

General Fund: \_\_\_\_\_

Activity Fund: \_\_\_\_\_

Club Fund: \_\_\_\_\_

**New Caney ISD  
Vendor Information Form**

Vendor Name: \_\_\_\_\_

Sales Representative & Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_ Remit to Address: \_\_\_\_\_

City: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

(Email address must be an address where Purchase Orders can be sent)

Website: \_\_\_\_\_

What New Caney ISD Campus/Department has requested your services? \_\_\_\_\_

Name of New Caney ISD contact: \_\_\_\_\_

List any Purchasing Cooperatives that your company is a member of:

\_\_\_\_\_  
\_\_\_\_\_

Each vendor must complete a W-9, CIQ and Commodity Check List (if applicable).

If vendor will be physically on a campus the vendor must complete a Certification of Criminal History Record Information Sheet. **Vendors with direct/unsupervised contact with students must complete SB9 Fingerprinting Requirements.**

If a Sole Source vendor, attach a completed Sole Source Affidavit. (Original Copy & Notarized)

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**For New Caney ISD Purchasing Department use only:**

Requested by: \_\_\_\_\_

Date of Approval: \_\_\_\_\_

Approved by: \_\_\_\_\_

Vendor Number: \_\_\_\_\_

**Procurement Categories (Please mark all that apply)**

- ☐ Alarm Supplies and Equipment
- ☐ Animal Supplies and Equipment
- ☐ Appliances & Equipment
- ☐ Appraisal Services
- ☐ Architectural Services
- ☐ Athletic/PE Supplies and Equipment
- ☐ Auctioneer Services
- ☐ Audio Equipment & Accessories
- ☐ Audit Services
- ☐ Auto Leases
- ☐ Awards and Trophies
- ☐ Books/Reading Materials
- ☐ Building Construction/Improvement Services
- ☐ Building Maintenance
- ☐ Building Materials & Supplies
- ☐ Cafeteria & Kitchen Equipment, Commercial
- ☐ Cameras, Photographic Equipment, Film, & supplies
- ☐ CTE Supplies - Cosmetology
- ☐ CTE Supplies - Fire Training
- ☐ CTE Supplies - Forensic Science
- ☐ CTE Supplies - Pharmacy Tech
- ☐ CTE Supplies - Culinary
- ☐ CTE Supplies - Welding
- ☐ CTE Supplies - Engineering
- ☐ CTE Supplies - Fashion Design
- ☐ CTE Supplies - Carpentry
- ☐ CTE Supplies - Business
- ☐ CTE Supplies - Marketing
- ☐ CTE Supplies - Health Care
- ☐ CTE Supplies - Criminal Justice
- ☐ CTE Supplies - Floral Design
- ☐ CTE Supplies - Bio Med
- ☐ CTE Supplies - Agriculture
- ☐ CTE Supplies - Auto Tech
- ☐ Catering Services
- ☐ Childcare Services
- ☐ Choir Supplies
- ☐ Communications & Media services
- ☐ Contracted Services - Therapist
- ☐ Contracted Services - Judges
- ☐ Contracted Services - Choreogs/Clinicians/Accompanist
- ☐ Contracted Services - Speakers
- ☐ Contracted Services - Consultants
- ☐ Contracted Services - Diagnosticians
- ☐ Contracted Services - Maintenance and Repairs
- ☐ Contracted Services - DJ Services
- ☐ Contracted Services - Charter Bus Services
- ☐ Contracted Services - Staff Development
- ☐ Contracted Services - Web Based Services
- ☐ Contracted Services - Misc
- ☐ Contracted Services - Fire/Burglar Monitoring
- ☐ Contracted Services - Custodial Services
- ☐ Child Nutrition Equipment
- ☐ Copiers
- ☐ Costume or Apparel Rental
- ☐ Courier/Delivery Services
- ☐ Custodial Equipment & Supplies
- ☐ Custom Clothing (Screen Printing, Embroidery, Etc)
- ☐ Data Processing Services
- ☐ Document Disposal/Shredding
- ☐ Drill Team Supplies
- ☐ Drug screening
- ☐ Dry Cleaning services
- ☐ Engineering Services
- ☐ Environmental Services & Ecological Services
- ☐ Fencing Material & Supplies
- ☐ Fencing Repair & Maintenance Services
- ☐ Fire Extinguisher Inspection & Maint. Services
- ☐ Fire Sprinkler System Maintenance Services
- ☐ Flags, Flag Poles, & accessories
- ☐ Flowers, arrangements
- ☐ Food Service Supplies & Equipment
- ☐ Food/Snacks
- ☐ Foods - Bakery products, fresh
- ☐ Foods - Dairy products, fresh
- ☐ Foods - frozen
- ☐ Foods - perishable, fruits & vegetables
- ☐ Foods - staples, grocery & misc. items
- ☐ Fuel
- ☐ Furniture; Classroom, Cafeteria, Libr., Lounge
- ☐ Furniture; Office
- ☐ Graduation Supplies
- ☐ Insect & Rodent Control Services
- ☐ Instructional Supplies - Gen.
- ☐ Instructional Supplies - Special Education
- ☐ Instructional Supplies - Art

- ☐ Instructional Supplies - Science
- ☐ Instructional Supplies - Textbooks
- ☐ Instructional Supplies - Testing Mat
- ☐ Interpreter Services - foreign lang.
- ☐ Laundry Equipment
- ☐ Legal Services, Attorneys, lawyers
- ☐ Library Supplies
- ☐ Library books
- ☐ Mailing Equipment - Postage Meter Rental/Lease
- ☐ Maintenance Equipment Rentals
- ☐ Maintenance & Repair Services - Plumbing
- ☐ Maintenance & Repair Services - appliances & furniture
- ☐ Maintenance & Repair Services - athletic/grounds equipment
- ☐ Maintenance & Repair Services - Irrigation
- ☐ Maintenance & Repair Services - Flooring
- ☐ Maintenance & Repair Services - Grease Trap
- ☐ Maintenance & Repair Services - HVAC
- ☐ Maintenance & Repair Services - Misc
- ☐ Maintenance & Repair Services - Elevator
- ☐ Maintenance Supplies & Equipment - Elect
- ☐ Maintenance Supplies & Equipment - Plumbing
- ☐ Maintenance Supplies & Equipment - HVAC
- ☐ Maintenance Supplies & Equipment - Painting
- ☐ Maintenance Supplies & Equipment - Flooring
- ☐ Maintenance Equipment - Grounds/Athletic Fields
- ☐ Maintenance Supplies - Fertilizer
- ☐ Maintenance Supplies - Pesticides
- ☐ Maintenance Supplies - Paint - Ath. Marking
- ☐ Maintenance Supplies - Seed/Sod/Sprigs
- ☐ Maintenance Supplies - Parts - Grounds Equip
- ☐ Maintenance Supplies - Soils, Mulch, Amendments
- ☐ Maintenance Supplies - Irrigation Parts/Supplies
- ☐ Maintenance Supplies - Welding Supplies
- ☐ Maintenance Supplies - Locksmith
- ☐ Maintenance Supplies - Misc
- ☐ Medical Supplies; EMT Supplies, bandages
- ☐ Mobility equip / Wheelchairs / Lift chairs
- ☐ Music instruments
- ☐ Musical Instrument Repair
- ☐ Musical Supplies
- ☐ Network Cabling
- ☐ Office Equipment and Supplies
- ☐ Paper
- ☐ Playground Equipment & Supplies
- ☐ Police and Security Equipment & Supplies
- ☐ Postage Meter Supplies
- ☐ Printing
- ☐ Printing - Construction Documents
- ☐ Printing Equipment and Supplies
- ☐ Promotional Supplies
- ☐ Prosthetic devices & hearing aids
- ☐ Radio & Telephone Equipment
- ☐ School/Campus Safety Supplies
- ☐ Security & Card Reader Access System
- ☐ Security Systems
- ☐ Sewing Notions, Accessories & supplies
- ☐ Shop Equipment and Supplies
- ☐ Software
- ☐ Specialized Equipment for the handicapped & disabled
- ☐ Technology Supplies
- ☐ Technology - Hardware
- ☐ Technology - Repair Services
- ☐ Technology - Software
- ☐ Television Equipment & accessories
- ☐ Theatrical Services
- ☐ Tires & Tubes
- ☐ Toner and Ink
- ☐ Trash Disposal
- ☐ Travel Agency Services
- ☐ Uniform Rental Services
- ☐ Uniforms - Band
- ☐ Uniforms - Cheerleaders
- ☐ Uniforms - Choir
- ☐ Uniforms - Drill Team
- ☐ Vehicle - Bus
- ☐ Vehicle - Car, Truck, Van, SUV
- ☐ Vehicle - Parts & Supplies
- ☐ Vehicle - Maint. & Repairs
- ☐ Vehicle - Rental
- ☐ Vehicle - Towing
- ☐ Vehicle - Inspections
- ☐ Window coverings
- ☐
- ☐
- ☐
- ☐

# Request for Taxpayer Identification Number and Certification

Give Form to the  
requester. Do not  
send to the IRS.

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ <b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) ►	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
or									
Employer identification number									
				-					

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►
-----------	----------------------------	--------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

## New Caney ISD Conflict of Interest Instructions

New Caney ISD 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 disclosure and the corresponding form. As of September 1, 2015, any vendor who does business with NCISD or who seeks to do business with NCISD must complete the new Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exist. A conflict exists in the following situations:

1. If the vendor has an employment or other business relationship with a local government officer of NCISD 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 NCISD, 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 NCISD.

### Definitions:

- **Vendor**: a person or company that enters or seeks to enter into a contract with NCISD for the sale of goods or services.
- **Business Relationship**: 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**: 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**: (A) a member of the NCISD Board of Trustees; (B) a superintendent, director, administrator, or other person designated as an executive officer; (C) an agent of NCISD who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

**If no conflict of interest exist: You must fill out Box 1 and type “N/A”  
in Box 3 of the CIQ form, sign and date the form.**

In the event of a change in circumstances, an updated CIQ must be filed within seven (7) business days after the vendor becomes aware that a conflict of interest exists.



# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

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

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

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

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

## OFFICE USE ONLY

Date Received

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

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

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

☐ Yes

☐ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

☐ Yes

☐ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## Felony Conviction Notification

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district If the person or owner or operator of the business entity has been convicted of a felony." The notice must include a general description of the conduct resulting in the conviction of a felony. Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

This notices not required of a publicly held corporation.

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

Company: \_\_\_\_\_ Company Official: \_\_\_\_\_  
(Please type or print) (Please type or print)

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

Signature of authorized agent:

\_\_\_\_\_

B. My firm is not owned or operated by anyone who has been convicted of a felony.

Signature of authorized agent:

\_\_\_\_\_

C. My firm is owned or operated by the following individuals who has/have been convicted of a felony.

Signature of authorized agent:

\_\_\_\_\_

Name or individual(s):

\_\_\_\_\_

Details of conviction(s):

\_\_\_\_\_

\_\_\_\_\_

# Instructions to Obtain Fingerprints Through DPS

Vendors with less  
than 4 employees

OR

Vendors with 4 or more employees on campus will sign form\* 15 &  
verify their own employees are compliant to be on NCISD property

## **Step 1: OBTAIN SERVICE CODE FORM**

Call the NCISD Purchasing office at 281.577.8600 and ask for the Service code form. This form has 2 numbers that you will need.

## **Step 2: visit IdentoGO website**

Visit Url <https://uenroll.identogo.com/>  
Follow the instructions & enter the requested information. Enter the service code (beginning with 11)

You will also be asked to enter an ORI number (beginning with TX).

You will be given locations that are closest to you based on the zip code you enter.

You will be sent a confirmation email outlining your time and date of your ten-minute fingerprint appointment.

## **Step 3: Go to Fingerprint Appointment**

Bring your required form of ID and proper payment to your appointment.

## **Step 4: Notify School District**

Provide receipt or notification to purchasing department of successful appointment.

Make sure to provide forms\* 12b & 13 for all four employees.

\*

All forms can be found on our district website under departments, Purchasing [www.newcaneyisd.org/page/366](http://www.newcaneyisd.org/page/366)

## **Step 1: ESTABLISH FACT CLEARINGHOUSE ACCESS**

You will verify your employees through the DPS Fact Clearinghouse. First establish an account with the DPS for FACT Clearinghouse. Contact DPS to obtain the contractor packet. You can contact DPS by email or phone. State that you are a “**public school district contractor**” and that you need to have an account established for “DPS FACT clearinghouse access”. Please include: Name, Address, Phone, and email address to be used for notification of FACT records and messages.

Email: [FACT@txdps.state.tx.us](mailto:FACT@txdps.state.tx.us)

Phone: (512) 424-2474 option 1

DPS will send you the required paperwork that must be completed and returned to DPS. With this paperwork, you must also include a **letter from New Caney ISD** (Included in the information from NCISD and is addressed to: TxDPS Crime Records Service Access & Dissemination Bureau). Be sure that you sign the letter and it is sign by a district administrator.

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

***Please Note:** After you sign the DPS User Agreement for FACT and return the required paperwork that will be emailed to you, New Caney ISD will provide a Fingerprint Services (SERVICE CODE FORM) for you to register for a fingerprinting appointment. Follow the directions of the form by logging on or calling into IdentoGO and you will be able to schedule an appointment for the fingerprinting.*

## **Step 2: RECEIVING YOUR SERVICE CODE FORM AND SCHEDULING YOUR APPOINTMENT**

If you are a **general contractor (GC)** or **subcontractor (SC)** your secure site account will first have to be approved and then an ORI number configured. You should receive a series of email messages from the secure site, but the process won't be completed until you receive the message notifying you that “You have a message in your message center.” At this time you can log onto your account and retrieve your SERVICE CODE FORM from the message center on the secure site.

Companies, Vendors, GC's, & SC's will give the SERVICE CODE FORM to anyone who will be working on school grounds. Employees or subcontractors under you will make an appointment for fingerprinting using the SERVICE CODE number you give them (not the schools' number). They will visit IdentoGo, <https://uenroll.identogo.com/>. They will need to bring their required form of ID and proper payment to your appointment.

Companies can use their secure site account to check their employees' backgrounds to make sure that they don't have any offenses that would keep them from working on school grounds. In the NCISD information packet, there are forms that must be signed by the company that certifies that the employees of the company have completed the fingerprinting process and that you (as the DPS account holder) will notify NCISD if there is a change in one of your employee's status.

## **Step 3: AFTER YOU HAVE COMPLETED FINGERPRINTING**

Once you have completed the fingerprinting process, you must notify the NCISD Purchasing Department. NCISD will make a copy of the receipt and return the original to you for your records. Once the entire contract is reviewed and signed by NCISD, you are able to provide services to the district. If for any reason your fingerprinting or criminal background check reveals any of the characteristics that do not meet the District's expectations, your approval as a contractor for NCISD will be denied. If you have additional employees that work for your company, it is your responsibility to insure that those employees are fingerprinted, monitor their records and notify NCISD if their approval status changes.

# DPS Computerized Criminal History (CCH) Verification

## (AGENCY COPY)

I, \_\_\_\_\_, acknowledge that a Computerized Criminal

APPLICANT or EMPLOYEE NAME (Please print)

History (CCH) check may be performed by accessing the Texas Department of Public Safety Secure Website and may be based on name and DOB identifiers. (This is not a consent form, but serves as information for the applicant.) Authority for this agency to access an individual's criminal history data may be found in Texas Government Code 411; Subchapter F.

Name-based information is not an exact search and only fingerprint record searches represent true identification to criminal history record information (CHRI), therefore the organization conducting the criminal history check is not allowed to discuss with me any CHRI obtained using the name and DOB method. The agency may request that I also have a fingerprint search performed to clear any misidentification based on the result of the name and DOB search.

In order to complete the fingerprint process I must make an appointment with the Fingerprint Applicant Services of Texas (FAST) as instructed online at [www.dps.texas.gov/Crime Records Information/Review of Personal Criminal History](http://www.dps.texas.gov/Crime%20Records%20Information/Review%20of%20Personal%20Criminal%20History) or by calling the DPS Program Vendor at 1-888-467-2080, submit a full and complete set of fingerprints, request a copy be sent to the agency listed below, and pay a fee of \$25.00 to the fingerprinting services company.

Once this process is completed the information on my fingerprint criminal history record may be discussed with me.

**(This copy must remain on file by this agency. Required for future DPS Audits)**

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Date

New Caney Independent School District  
Agency Name (Please print)

Toni Bullock  
Agency Representative Name (Please print)

\_\_\_\_\_  
Signature of Agency Representative

\_\_\_\_\_  
Date

<b>Please:</b>	
<b>Check and Initial each Applicable Space</b>	
CCH Report Printed:	
YES ____	NO ____ initial
Purpose of CCH: _____	
Empl ____	Vol/Contractor ____ initial
Date Printed: _____	initial
Destroyed Date: _____	initial
<b>Retain in your files</b>	

# New Caney Independent School District

## Criminal History Authorization Information for Contractors

As part of your contract process, you will need to complete the following questions in order for NCISD Chief of Police to run a state-wide criminal history check:

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_

Social Security Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Place of Birth: \_\_\_\_\_  
City, County & State

Male \_\_\_ Female \_\_\_ Ethnicity: \_\_\_\_\_ Driver's License Number: \_\_\_\_\_  
Issuing State: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Have you ever used another name(s) including maiden name? No \_\_\_ Yes \_\_\_  
If yes, please list: \_\_\_\_\_

Have you ever lived in another state (other than Texas) or country in the past? No \_\_\_ Yes \_\_\_  
If yes, please list: \_\_\_\_\_

Have you ever been convicted of, pled guilty or no contest (nolo contendere) to, or received probation, suspension, or deferred adjudication for a felony or any offense involving moral turpitude (including, but not limited to, theft, rape, murder, swindling, and indecency with a minor)? No \_\_\_ Yes \_\_\_  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(A felony conviction is not an automatic bar to service with the district. The district will consider the nature, date, and relationship between the offense and the service for which you are applying.)

Have you ever been convicted of any criminal offense in a country outside the jurisdiction of the United States? No \_\_\_ Yes \_\_\_  
If yes, please explain: \_\_\_\_\_

New Caney Independent School District shall obtain the criminal history record information for each independent contractor, who in the opinion of the district, is a serious candidate and may be offered a contract with New Caney ISD.

I hereby authorize any law enforcement agency, including a police department, the Texas Department of Public Safety and the Texas Department of Corrections, to release to this school district my complete criminal history record. I understand that the district is prohibited by Federal Regulations from providing me with a copy of my DPS criminal history record; however I further understand that upon my request, the district may quote to me data from the report. Thereafter, I have the right to challenge the accuracy of my DPS criminal history record.

I understand the Information I am providing about age, sex, and race/ethnicity will not be used to determine eligibility for employment, but will be used solely for the purpose of obtaining criminal history record information.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CERTIFICATION OF CRIMINAL HISTORY INFORMATION**  
**SUBMISSION BY CONTRACTOR OR SUBCONTRACTOR**

**Certifying Affidavit submitted to:**

**Name of School District:** New Caney ISD

**Mailing Address:** 21580 Loop 494  
New Caney, TX 77357

**Project/Agreement:** \_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS                      §

COUNTY OF Montgomery                      §

(1) The undersigned representative, on behalf of the contracting firm identified below, swears and affirms to New Caney ISD Independent School District (the “District”) the following (please check the option that applies):

- ☐ Such firm has ensured that all employees of the contracting or subcontracting firm who (i) have or will have continuing duties related to the contracted services, and (ii) have or will have direct contact with students (substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional District employee) have submitted all information necessary for the LEE Fast Pass process, but such firm does not have access to the results of the criminal history search.
- ☐ If the public work involves an existing “instructional facility,” as defined by Tex. Ed. Code §46.001, such firm certifies that (1) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and (2) that the contractor has adopted a policy prohibiting employees, including subcontractor employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area. Such firm further certifies that it has an ongoing responsibility to make a reasonable effort to ensure that the aforementioned conditions/precautions continue to exist throughout the time that the contracted services are provided.
- ☐ No employees, including the undersigned, have or will have direct contact with students, as



defined by Tex. Admin Code §153.1101(7).

(3) The undersigned firm swears and covenants that no present or future employee of the contracting firm, no present or future independent contractor, and no present or future employee or independent contractor of any subcontractor of the contracting firm, will provide services to the Project on a continuing basis that involve direct contact with students unless and until such employee's or independent contractor's national criminal history record information has been received, reviewed, and verified by District, as required herein. In the event of an emergency, an employee or independent contractor who has not been previously certified may only provide services that involve direct contact with students if such employee is escorted by a District employee.

(4) The undersigned firm swears and covenants that, upon receipt of information, directly or indirectly, that any employee or independent contractor of the contracting firm has been convicted of an offense identified in Section 22.085 of the Texas Education Code or prohibited by District policy, the contracting firm will immediately remove or cause the removal of such employee from the Project or scope of the Agreement and notify the District.

(5) If applicable, the undersigned agrees that its use of the District's DPS LEE Pass account/number to obtain criminal history information in no way creates any agency relationship between the District and the undersigned or its employees.

\_\_\_\_\_, being duly sworn, affirms and certifies that he/she is the \_\_\_\_\_ (position) of \_\_\_\_\_ (contracting firm), and that all statements and acknowledgements contained herein are true and correct, and that he/she has the authority to bind such firm to the covenants set out above.

Noncompliance or misrepresentation regarding the certification may be grounds for contract termination.

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Signature and Date)

## EDGAR CERTIFICATIONS

### ADDENDUM FOR CONTRACT FUNDED BY U.S. FEDERAL GRANT

The following certifications and provisions are required and apply when New Caney Independent School District ("NCISD") expends federal funds for any contract resulting from this procurement process. **Accordingly, the parties agree that the following terms and conditions apply to the Contract between the District and [REDACTED] ("Vendor") in all situations where Vendor has been paid or will be paid with federal funds:**

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#### REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS APPENDIX II TO 2 CFR PART 200

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**(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.**

Pursuant to Federal Rule (A) above, when NCISD expends federal funds, NCISD reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor \_\_\_\_\_

**(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)**

Pursuant to Federal Rule (B) above, when NCISD expends federal funds, NCISD reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. NCISD also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if NCISD believes, in its sole discretion that it is in the best interest of NCISD to do so. Vendor will be compensated for work performed and accepted and goods accepted by NCISD as of the termination date if the contract is terminated for convenience of NCISD. Any award under this procurement process is not exclusive and NCISD reserves the right to purchase goods and services from other vendors when it is in NCISD's best interest.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor \_\_\_\_\_

**(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."**

Pursuant to Federal Rule (C) above, when NCISD expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does Vendor agree to abide by the above? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor \_\_\_\_\_

**(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision**

to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when NCISD expends federal funds during the term of an award for all contracts and subgrants for construction or repair, Vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

**(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when NCISD expends federal funds, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by \_ISD resulting from this procurement process.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

**(F) Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by NCISD, Vendor certifies that during the term of an award for all contracts by NCISD resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

**(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—**Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by NCISD, Vendor certifies that during the term of an award for all contracts by NCISD resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

**(H) 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 Federal Rule (H) above, when federal funds are expended by NCISD, Vendor certifies that during the term of an award for all contracts by NCISD resulting from this procurement process, Vendor 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.

Does Vendor agree? **YES \_\_\_\_\_ Initials of Authorized Representative of Vendor**

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.**

Pursuant to Federal Rule (I) above, when federal funds are expended by NCISD, Vendor certifies that during the term and after the awarded term of an award for all contracts by NCISD resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

- (1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does Vendor agree? **YES \_\_\_\_\_ Initials of Authorized Representative of Vendor**

**(J) Procurement of Recovered Materials – When federal funds are expended, NCISD and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.**

Pursuant to Federal Rule (J) above, when federal funds are expended by the District, as required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6962(c)(3)(A)(i)), the vendor certifies, by signing

this document, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

Does vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of vendor

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**RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS**

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When federal funds are expended by NCISD for any contract resulting from this procurement process, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

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**CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

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When NCISD expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

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**CERTIFICATION OF EQUAL EMPLOYMENT STATEMENT**

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It is the policy of NCISD not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

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**CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

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NCISD has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

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**CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336**

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Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

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**CERTIFICATION OF APPLICABILITY TO SUBCONTRACTS**

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Vendor agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does Vendor agree? YES \_\_\_\_\_ Initials of Authorized Representative of Vendor

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**VENDOR AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT VENDOR CERTIFIES COMPLIANCE WITH ALL PROVISIONS, LAWS, ACTS, REGULATIONS, ETC. AS SPECIFICALLY NOTED ABOVE.**

Vendor's Name: \_\_\_\_\_

Address, City, State, and Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Printed Name and Title of Authorized Representative: \_\_\_\_\_

Email Address: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_



**CONTRACTOR'S CERTIFICATE REGARDING  
ALCOHOLIC BEVERAGE AND TOBACCO-FREE CAMPUS POLICY<sup>20</sup>**

The CONTRACTOR agrees that it will abide by and implement the DISTRICT's Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on DISTRICT-owned or leased buildings, on DISTRICT property and in DISTRICT vehicles. The CONTRACTOR shall procure signs stating "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to school property at all time

**Proposer Certification for "Alcoholic Beverage and Tobacco-Free Campus Policy:"**

☐

YES, I Agree to the above

Initial: \_\_\_\_\_

☐

NO, I do NOT Agree to the above

Initial: \_\_\_\_\_

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<sup>20</sup> Alcoholic Beverage & Tobacco-Free Policy: [21 CFR § 1140.1](#)

## Buy American Provision Certification<sup>16</sup>

This Certification is required for all items domestically grown and processed in the United States, which exceeds 50% domestic end product. Proposers is to provide certification for all products derived from domestic products to include Fruit, Vegetables, Grains, Legumes and Oil based products. Failure to certify such items may disqualify award of such line item.

Vendor certifies that vendor complies with all applicable provisions of the Buy American Act. The Buy American Provision requires school food authorities to schools to purchase, to the maximum extent practicable, domestic commodities or products. For a product to meet the Buy American requirement, over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically, and processed domestically. Unprocessed foods must be 100% domestic. See [7 CFR § 210.21\(d\)](#), and USDA-FNS memo [SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program](#). The Buy American provision applies to all purchases made with School Nutrition Program (SNP) funds. Purchases made in accordance with the Buy American Provision must still follow the applicable procurement rules calling for full and open competition.

### Proposer Certification, Compliance with Buy American Provision:

- ☐ YES, Vendor certifies all products bid comply with the above.  
☐ NO, Vendor certifies not all products bid comply with the above.

*Any exception to the Buy American Provision must be noted on the provided attachment in this solicitation for Buy American Deviations for each food and/or beverage item.*

Every effort shall be made to follow the Buy American Provision required by the National School Lunch Act to include domestically grown products in school food programs. By signing this certification, the Proposer is acknowledging the Buy American requirements per Instructions and Information.

Company Name:	
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### Proposer Certification for "Buy American Provision:"

<input type="checkbox"/>	YES, I Agree to the above	Initial: _____
<input type="checkbox"/>	NO, I do NOT Agree to the above	Initial: _____

<sup>16</sup> Buy American Certification: [7 CFR 210.21 Sec. D](#)

### **"BUY AMERICAN" WAIVER EXCEPTION LIST<sup>17</sup>**

This documentation is required for all food items that are not produced and processed in the U.S. with at least 51% of its agricultural food components, by weight or volume, from the U.S. The Buy American regulations states:

The "Buy American" provisions of Public Law (p.L.) 105-336 under the Richard B. Russell National School Lunch Act allows for an exception when the recipient agency determines that the following instances apply to non-domestic produced products:

- a. There is no domestic alternative source or substitute food product.
- b. Domestic product is not available in the specified quantity or quality.
- c. The cost difference of domestic product vs non-domestic is unreasonable.

[53 FR 27476, July 21, 1988, as amended at 58 FR 39122, July 22, 1996; 67 FR 65015, Oct. 23, 2002]

**PLEASE COMPLETE THE BUY AMERICAN DEVIATIONS ATTACHMENT IN THIS RFP.**

If any "domestic alternatives" are available, please provide the pricing comparison for all products on the attachment included in this RFP.

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<sup>17</sup> Buy American Waiver Exception List: [7 CFR 210.21 Sec. D](#)

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKER'S COMPENSATION <sup>18</sup>**  
(To be executed by Vendor and Submitted with Proposal)

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of work of this contract.

**Proposer Certification for "Worker's Compensation:"**

☐

YES, I Agree to the above

Initial: \_\_\_\_\_

☐

NO, I do NOT Agree to the above

Initial: \_\_\_\_\_

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

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<sup>18</sup> Worker's Compensation: [48 CFR 970.2803-1](#)



## CONTRACTOR'S CERTIFICATE REGARDING DRUG-FREE WORKPLACE<sup>19</sup>

This Drug-Free Workplace Certification form is required from all successful Proposers pursuant to the requirements mandated by Government Code sections 8350 et. seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the CONTRACTOR or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- 1) Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition;
- 2) Establishing a drug-free awareness program to inform employees about all of the following:
  - a) The dangers of drug abuse in the workplace;
  - b) The person's or organization's policy of maintaining a drug-free workplace;
  - c) The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - d) The penalties that may be imposed upon employees for drug abuse violations;
- 3) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the DISTRICT determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of sections 8350 et. seq.

I acknowledge that I am aware of the provisions of Government Code sections 8350 et. seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

### Proposer Certification for "Drug-Free Workplace:"

☐

YES, I Agree to the above

Initial: \_\_\_\_\_

☐

NO, I do NOT Agree to the above

Initial: \_\_\_\_\_

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<sup>19</sup> Drug-Free Workplace: [38 CFR § 48.635](#)

**HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) – MINORITY & WOMEN’S BUSINESS ENTERPRISE (MWBE), SMALL BUSINESS ENTERPRISE (SBE), AND LABOR SURPLUS AREA (LSA) FIRM PARTICIPATION<sup>11</sup>**

Per [2 CFR §200.321](#) contracting with MWBE, SBE, and LSA firms both as prime and subcontractors is encouraged.

- a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- b. Affirmative steps must include:
  - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

The prime contractor must take the affirmative steps outlined above. It will be the responsibility of the prime contractor to pre-qualify and subcontractors offered as Small and Minority Business, Women’s Business Enterprise, and Labor Surplus Area Firm participants. These entities must meet the same minimum standards and requirements as the prime contractor. Proposers shall indicate on their submitted proposals whether or not they are a Small and Minority Business, Women’s Business Enterprise, or Labor Surplus Area Firm and with whom they are certified, e.g. City, State, Federal, and include a copy of the certificate(s)/documentation with the proposal response.

☐ I certify my company is NOT a Historically Underutilized Business (HUB)

☐ I certify my company is a Historically Underutilized Business (HUB) in the following category (check all that apply): *Attach copy of HUB or applicable certifications(s).*

☐ Minority Owned Business

☐ Women Owned Business

☐ Small Business

☐ Labor Surplus Area Firm

**Proposer Certification for “MWBE/SBE/LSA Participation:”**

☐ YES, I Agree to the above

Initial: \_\_\_\_\_

☐ NO, I do NOT Agree to the above

Initial: \_\_\_\_\_

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<sup>11</sup> SMWBE: [2 CFR 200.321](#)



**IRAN CONTRACTING ACT**  
**CERTIFICATION OF ELIGILITY TO PROPOSAL FOR CONTRACTS OF \$ 1 MILLION OR MORE**  
**(Public Contract Code sections 2202-2208)<sup>22</sup>**

Pursuant to Public Contract Code 2204. (a) A public entity shall require a person that submits a proposal or proposal to, or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars (\$1,000,000) or more to certify, at the time the proposal is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. A state agency shall submit the certification information to the Department of General Services.

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to proposal on contracts. (Public Contract Code section 2205.)

**OPTION #1 - CERTIFICATION**

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in (city, state)</i>

**OPTION #2 – EXEMPTION**

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to proposal on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

## **CERTIFICATION OF COMPLIANCE REGARDING TEXAS FAMILY CODE**

**AS per Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73<sup>rd</sup> Legislature, R.S. (1993), all bidders must complete and submit with the bid the following affidavit:**

I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation, or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement. I understand that under this doe, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation, or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement is NOT eligible to bid or receive a state contract.

## **CERTIFICATION OF NON-COLLUSION STATEMENT**

The respondent certifies under penalty of perjury that their response is in all respects bona fide, fair, and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or legal entity.

**The Proposer agrees to comply with all Federal, State, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that Proposer certifies compliance with all provisions, laws, acts, regulations, etc. as noted above.**

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Organization Name

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Address, City, State, and Zip Code

---

Phone & Fax

---

Email Address

---

Printed Name and Title of Authorized Representative

---

Signature Date

# Certificate of Residency

The State of Texas has passed a law concerning non-resident Companies. This law can be found in Texas Education Code under Chapter 2252, Subchapter A. This law makes it necessary for NGSD to determine the residency of its bidders/proposers for construction related services. In part, this law reads as 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 is in this state, including a Company 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 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 nonresidents principal place of business is located."

I certify that \_\_\_\_\_  
(Name of Company Bidding/Proposing)

is, under Section: 2252.001 (3) and (4), a

Resident Bidder/Proposer

Non-resident Bidder/Proposer

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

## SUSPENSION AND DEBARMENT CERTIFICATION

Federal Law (A102 Common Rule and OMB Circular A-110) prohibits non-federal entities from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods and services equal to or in excess of \$100,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Firms receiving individual awards of \$100,000 or more and all sub-recipients must certify that their organization and its principals are not suspended or debarred by a federal agency.

Before an award of \$100,000 or more can be made to your Company, you must certify that your organization and its principals are not suspended or debarred by a federal agency.

I, the undersigned agent for the Company named below, (check one)

\_\_\_\_\_ certify that neither this Company nor its principals are suspended or debarred by a federal agency.

\_\_\_\_\_ certify that either the Company or its principals filing this bid has been suspended or debarred by a federal agency.

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

## OFFICE USE ONLY

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

ENTER YOUR BUSINESS NAME, CITY, STATE & COUNTRY HERE

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

ENTER NEW CANEY I.S.D. HERE (WE ARE THE GOVERNMENTAL ENTITY)

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

ENTER THE BID/RFP NUMBER HERE

ENTER THE BID/RFP NAME HERE

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

Print a copy of the completed form (make sure that it has a computer-generated certification number in the "Office Use Only" box)  
Fill out the UNSWORN DECLARATION (bottom part) and sign.

5 Check only if there is NO Interested Party. ☐

## 6 UNSWORN DECLARATION

My name is \_\_\_\_\_, and my date of birth is \_\_\_\_\_.

My address \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(month) (year)

\_\_\_\_\_  
Signature of authorized agent of contracting business entity  
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY