

Agenda of Special Meeting

The Board of Trustees Lone Oak Independent School District

A Special Meeting of the Board of Trustees of Lone Oak Independent School District will be held February 27, 2022, beginning at 2:00 PM in the Lone Oak ISD Administration Building 8162 Highway 69 South Lone Oak, TX 75453.

The subjects to be discussed or considered or upon which any formal action may be taken are listed below. Items do not have to be taken in the same order as shown on this meeting notice. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

1. Establish a quorum and call meeting to order
2. Opening Prayer & Pledges
3. Forum for community input
4. Deliberation and possible action on the contract with the Construction Manager for the LOISD 2021 Bond Program (District-Wide Additions and Renovations). 2
5. Discuss and possibly approve budget amendment for track addition
6. Discuss and possibly approve the addition of two lanes to the track
7. Executive Session
 1. 551.075 Conference with employees of the district to receive information or ask questions
8. Take action on items discussed in the executive session
9. Adjournment

If, during the course of the meeting, discussion of any item on the agenda should be held in a closed meeting, the board will conduct a closed meeting in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, Subchapters D and E or Texas Government Code section 418.183(f). Before any closed meeting is convened, the presiding officer will publicly identify the section or sections of the Act authorizing the closed meeting. All final votes, actions, or decisions will be taken in open meeting. [See BEC(LEGAL)]

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on:

For the Board of Trustees

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Lone Oak ISD 2021 Bond Program (District-Wide Additions and Renovations)

THE OWNER:

(Name, legal status and address)

Lone Oak Independent School District
8162 Hwy. 69 South
Lone Oak, Texas 75453

THE ARCHITECT:

(Name, legal status and address)

Claycomb Associates, Inc.
6600 LBJ Frwy., Ste. 200
Dallas, Texas 775240

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor, as amended, (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, including but not limited to a Guaranteed Maximum Price Amendment, (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 Contract Documents include 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, the Contractor's bid or proposal, and Addenda relating to such solicitation documents, except to the extent that the solicitation documents used by the Owner have been modified by the terms of the Contract. Any reference to any Contract Documents shall mean the document as amended and/or supplemented for this Project.

§ 1.1.1.2 In the event of conflict, terms and conditions contained in the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction and are as fully a part of the Contract as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto. 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.

§ 1.1.3 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.

§ 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.

§ 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.

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§ 1.1.9 AGREEMENT BETWEEN OWNER AND ARCHITECT

The term "agreement between Owner and Architect" means the agreement for professional services for this Project between the Owner and Architect.

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.2.4 INTENT OF DRAWINGS

§ 1.2.4.1 Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or 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 which should reasonably have been ascertained by the Contractor, the Contractor shall request in writing an interpretation before proceeding with Work. If Contractor

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fails to make such a written request, no excuse or claim will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and Specifications which should reasonably have been ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

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

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

§ 1.2.7 **RELATION OF SPECIFICATIONS AND DRAWINGS:** The Drawings and specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, the proposals should be based on the most expensive combination of quality and quantity of work indicated. The appropriate method of performing the Work, in the event of the above-mentioned disagreements, will be made by the Architect, in consultation with and subject to the approval of the Owner.

§ 1.2.7.1 If Drawings and Specifications are not in concurrence regarding quantity or quality or if there are any other discrepancies in the Drawings and Specifications, Contractor shall request interpretation from the Architect.

§ 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. The capitalization of any other words or terms or the failure to capitalize any word or term, throughout the Contract Documents, shall have no meaning and shall have no effect on interpretations of the Contract Documents.

§ 1.4 Interpretation

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

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

§ 1.5.1 The Owner shall be deemed the owner of the Instruments of Service for the Project, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights, subject to any rights and/or licenses to or in the Instruments of Service granted to the Owner by the terms and provisions of the agreement between Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's, the Architect's or Architect's consultants' 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 solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

§ 1.7 Digital Data Use and Transmission

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

(Paragraphs deleted)

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor a written statement that funds are available and have been authorized for the full Contract amount for the Project or applicable phase of the Project.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor a written statement that funds are available and have been authorized for the full Contract amount for the Project or applicable phase of the Project only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum.

§ 2.2.3 Intentionally Omitted.

§ 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

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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.

§ 2.3.3 Intentionally Omitted.

§ 2.3.4 If requested in writing to do so by the Contractor prior to the start of the Work, the Owner may, at the Owner's sole discretion, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR 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 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and the agreement by Owner to furnish such other information or services, provided that Owner shall not be required to expend any funds to obtain such information unless Owner agrees to do so.

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10)-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. The Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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 shall perform the Work in a good and workmanlike manner except where the Contract Documents expressly specify a higher degree of finish or workmanship.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 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 to the extent a reasonable contractor can anticipate such items, and (4) availability and cost of materials, tools and equipment. 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 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 Drawings and other Contract Documents relative to that portion of the

Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor. 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 or the Owner 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.

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner.
- .2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.
- .3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect's evaluation and response to the Contractor's Requests for Interpretation of the Contract Documents, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 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 the 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, 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 as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless (1) such errors, inconsistencies, omissions, differences, or nonconformities are the fault of Contractor, in whole or in part, (2) the Contractor failed to discover such errors, inconsistencies, omissions, differences, or nonconformities due to his failure to properly perform the obligations of Section 3.2.2 or 3.2.3, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, or nonconformities and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, or nonconformities as part of Contractor's performance of its obligations under the Contract Documents, including the performance of Contractor's preconstruction services.

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

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§ 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. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Contractor shall perform the Work using its proposed alternative means, methods, techniques, sequences, or procedures, if they are approved by the Architect and/or Owner.

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

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 It is understood and agreed that the relationship of the Contractor to the Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make the Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between the Owner and the Contractor. Any direction or instruction by the Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect the Contractor's independent contractor status as described herein.

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

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

§ 3.4 Labor and Materials

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

§ 3.4.2 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 consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

.3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any amounts paid to the Architect or other consultants for evaluating each proposed substitute. In the event the proposed substitution is accepted, the Contractor shall reimburse the Owner for any amounts paid to the Architect to make changes in the Drawings and Specifications made necessary by the substitution. The Owner shall have the right to deduct any amounts described in this § 3.4.2.3 from the Contract Sum. § 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE AND TOBACCO-FREE ZONES, OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR SUBCONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAWS OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4 PREVAILING WAGES.

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

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

- .1 A Contractor or subcontractor who violates the provisions of these Sections 3.4.4.1 and/or 3.4.4.2 shall pay to the Owner the sum of Sixty Dollars and no/100 (\$60.00) for each worker employed for each

calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project.

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

- .1 the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the Work; and
- .2 the actual per diem wages paid to each worker.

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

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

Payment greater than the prevailing wage is not prohibited.

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

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

§ 3.4.6 In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors, Owner may, at its option and without any notice required by the Contract, terminate the Agreement and/or the Contract for default unless the Contractor remedies the strike of work or work stoppage or other disruption within forty (40) calendar days after the dispute arises.

§ 3.4.7 The Contractor shall furnish Owner, on request, resumes of the Contractor's key personnel involved in the day-to-day Work on the Project.

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

§ 3.4.8.1 The Owner may reject or require removal of any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the project.

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

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

§ 3.4.9 The Contractor will, before any duties are performed on the Owner's property, (1) obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor as required by Texas Education Code Chapter 22, as amended, if the person has or will have continuing duties related to the Project, and the person has or will have the opportunity for direct contact with students in connection with the person's continuing duties (2) send or ensure that the person sends to the Texas Department of Public Safety

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("Department") information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs, and (3) certify to the Owner that the Contractor or the subcontracting entity that employs the person has received all criminal history record information relating to the person. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code, as amended.

The Contractor shall certify to the Owner that the contracting entity has obtained written certifications from any subcontracting entity that the Contractor has obtained written certifications from any subcontracting entity that the subcontracting entity has complied with Texas Education Code § 22.08341(e), as amended, as it relates to the subcontracting entity's employees.

The Contractor shall assume all expenses associated with the background checks.

The Contractor or a subcontracting entity may not permit an employee to who has or will have continuing duties related to the Project, and the employee has or will have the opportunity for direct contact with students in connection with the employee's continuing duties to provide services at an instructional facility if the employee, during the preceding 30 years, was convicted of any of the following offenses and the victim was under 18 years of age or was enrolled in a public school:

- (1) a felony offense under Title 5, Texas Penal Code;
- (2) 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
- (3) an offense under the laws of another state or federal law that is equivalent to an offense under Subdivision (1) or (2).

Additionally, no person who has or will have continuing duties related to the Project, and the person has or will have the opportunity for direct contact with students in connection with the person's continuing duties shall be engaged by the Contractor or by any entities with which the Contractor contracts, including but not limited to any suppliers or subcontractors, who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

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

The Owner may directly obtain the criminal history record information required by this Section 3.4.9 through the criminal history clearinghouse as provided by Texas Government Code § 411.0845. In that event, the Contractor shall reimburse the Owner for any costs incurred with obtaining the criminal history record.

The Owner reserves the right to determine what constitutes "the opportunity for direct contact with students".

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

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

(Paragraph deleted)

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§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance unless such maintenance is Contractor's responsibility, improper operation, or normal wear and tear and normal usage. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner and the Architect that the Work will be performed and completed in a good and workmanlike manner and in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required, to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner. The warranties set out in this subparagraph are not exclusive of any other warranties, remedies or guarantees set out in other places in the Contract Documents or implied under applicable law but are in addition to and not in limitation of any other such warranties, remedies, or guarantees.

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

§ 3.5.3 ONE-YEAR CORRECTION PERIOD

§ 3.5.3.1 In addition to the Contractor's obligations under Sections 3.5.1 and 3.5.2, and in conjunction with the provisions of Section 12.2.2 and its subparts, the Contractor is required to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner or discovered by the Owner within a period of one (1) year after Substantial Completion of the entire Work and shall further repair, replace, and/or re-execute any latent defect that is discovered by the Owner outside the one (1) year period but within the Texas Statute of Repose. This one-year period shall be referred to herein as the "One-Year Correction Period." Upon written notice from the Owner as provided by this Section 3.5.3.1 of any defective materials, equipment, or Work, the Contractor shall promptly remedy any such defects. The Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of defect and providing the proposed schedule to conduct corrective work within twenty-four (24) hours of Contractor's receipt of the Owner's written notice. Regarding latent defects discovered by the Owner outside of the One-Year Correction Period but within the Texas Statute of Repose, the Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of latent defect within twenty-four (24) hours of Contractor's receipt of the Owner's written notice and provide the proposed schedule to conduct corrective work within five (5) days of Contractor's receipt of the notice. If Contractor does not respond to Owner's written notice within the time specified herein or within such shorter period as may be required in the Contract Documents or take the appropriate corrective action within the time specified by 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 is given in writing to the Contractor on a timely basis, the obligation to provide the corrective work may extend beyond the applicable One-Year Correction Period until the defect is remedied and accepted by the Owner. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to Owner.

§ 3.5.3.2 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Guarantee" reflecting the terms and conditions of Section 3.5.3.1 and Section 12.2.2 and its subparts for all Work under the Contract Documents in a form acceptable to the Owner. This "General Guarantee" shall be assignable.

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§ 3.5.3.3 The Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the One-Year Correction Period on each phase or building which is substantially complete will expire, and dates of Final Completion. Prior to termination of the appropriate One-Year Correction Period, Contractor shall accompany the Owner and Architect on a re-inspection of the phase or building to which said One-Year Correction Period applies and shall 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. 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 One-Year Correction Period. If Contractor fails to accompany the Owner and Architect on a re-inspection of a phase or building at least one month prior to the expiration that phase's or building's One-Year Correction Period, Contractor's obligations described in Section 3.5.3.1 above, this Section 3.5.3.3, and Section 12.2.2 and its subparts shall continue until such inspection is conducted and any deficiencies found in the inspection are corrected.

§ 3.5.3.4 For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, the Contractor shall start remedying defects within three (3) days of initial notification of any defect from Owner.

§ 3.5.3.5 The provisions set forth in this Section 3.5 and its subparts shall not, in any way, operate to shorten or abridge any warranty periods or other corrective action periods described in the Contract Documents. Furthermore, the provisions set forth in this Section 3.5 and its subparts shall not, in any way, operate to limit or abridge any warranty or other duty to correct a defect contained in this or any other Contract Document, and shall not, in any way, adversely affect any rights of the Owner, whether said rights arise under the Contract, at law, or in equity.

§ 3.5.3.6 The One-Year Correction Period shall begin on a date established by the Owner and Architect in accordance with the Contract Documents. Except for work to be completed or corrected after the date of Substantial Completion and prior to final payment, this date shall typically be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties. The One-Year Correction Period for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall begin on the date the work is completed or corrected and accepted by the Owner and Architect or the date of final payment, whichever is later.

§ 3.5.3.7 In the event an item that is covered by the provisions of this Section 3.5.3 and its subparts fails during the One-Year Correction Period, the Contractor shall extend the original One-Year Correction Period by a length of time equal to the elapsed time which occurs from the notification in writing by the Owner of a defect claim until acknowledgement by the Owner that the claim has been resolved.

§ 3.5.4 Nothing contained in this Section 3.5 and its subparts 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 Correction Period as described in Section 3.5.3 and its subparts relates only to the specific obligation of the Contractor to correct the Work or to replace defective materials or equipment during that time period, 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 under the Contract Documents. The corrective remedies set forth in this Section 3.5 and its subparts are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§ 3.5.5 Nothing contained in this Section 3.5 and its subparts or any other part of the Contract Documents shall be construed as shortening the statute of limitations, including, but not limited to, the Statute of Repose, within which the Owner may bring suit against the Contractor.

§ 3.5.6 The warranties and other duties of Contractor to correct a defect 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.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, but **shall not** include in the Contract Sum, Guaranteed Maximum Price, if applicable, 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 except for any sales taxes that Contractor can demonstrate to Owner's satisfaction that could not be avoided even with the Owner's tax exempt status.

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons.

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

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§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent unless Superintendent's employment with Pogue is terminated, or Superintendent is unavailable for reasons beyond Pogue's control.

§ 3.9.4 The superintendent and all on-site supervisory staff shall be satisfactory to the Owner and Architect in all respects, and Owner and Architect shall have the right to reasonably require Contractor to remove from the Project any superintendent or on-site supervisor whose performance is not reasonably satisfactory to Owner and/or Architect, and to replace such superintendent or on-site supervisor with a superintendent or on-site supervisor reasonably satisfactory to Owner and Architect.

§ 3.9.5 The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect and shall not change such personnel or form of organization without the written approval of the Owner unless their employment with Pogue is terminated, or the person is unavailable for reasons beyond Pogue's control.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

- .1 If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion or Final Completion of the Work, the Contractor shall include with the updated schedule a

statement of the reasons for the anticipated delay and the Contractor's planned course of action for obtaining Substantial Completion and Final Completion of 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 any anticipated delay, 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 reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

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

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

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available and maintain, at the Project site, one (1) record copy of the Drawings, Specifications, Addenda, and any of the other Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one (1) record copy of the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect 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.

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 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 or Owner.

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall 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. 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.

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§ 3.12.11 The Contractor shall provide composite drawings within eight (8) weeks of receiving construction documents 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.

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

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

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. Structural members shall not be cut 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 surface by use of proper tools and materials using workers skilled in the required trades.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not fewer than one (1) time each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about

the Project and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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

§ 3.15.3 The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

§ 3.16 Access to Work

§ 3.16.1 The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.16.2 Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE INDEMNITY OBLIGATION SET FORTH HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

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

(Paragraph deleted)

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

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

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

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

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner as the Architect for the Project.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or expressly authorized by the Owner.

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

§ 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.

§ 4.2.4 Communications

Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Architect and Owner each 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, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents.

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

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; 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 the Owner incurs additional charges from the Architect because of the Architect being required to perform additional 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 fees or other costs charged by Architect 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.

§ 4.2.12 Interpretations and recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 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

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor;
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract;
- .3 such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; and
- .4 the subcontractor provides bonds as required by law of prime contractors, and by Owner.

When 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.

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

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

§ 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.

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.

§ 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 obligations and rights that the Contractor has under the Conditions of the Contract applicable to the Project.

§ 6.2 Mutual Responsibility

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

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

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

§ 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.

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§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued, subject to the approval of the Owner, by the Architect.

§ 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.

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

- a. Material quantities and input prices (separated into trades);
- b. Labor costs;
- c. Construction equipment;
- d. Workers' Compensation and Commercial General Liability insurance and other insurance required by the Contract Documents;
- e. Social Security Tax; and
- f. General Conditions.

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

On change orders involving increases in the amount of the Cost of the Work, overhead and profit will be allowed on the net increase only. No percentages for overhead and profit will be allowed on Tax.

The entire amount (100%) of any changes involving a decrease in the Cost of the Work or Contract Sum, including overhead and profit, will be credited back to the Owner.

The percentages for overhead and profit to be allowed to the Contractor or subcontractors on increases shall not exceed the following:

Combined Percentage Allowed (overhead and Profit)

The total combined mark up for overhead and profit on any Change shall not exceed 15%.

§ 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.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or 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;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

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

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved 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 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 recommendation for purposes of monthly certification for payment for those costs and

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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 recommendation 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.

§ 7.3.9 When the Owner and Contractor agree with a recommendation 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.

(Paragraph deleted)

§ 7.4 Minor Changes in the Work

The Architect, subject to the Owner's approval, may 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 or Contract Time, the Contractor shall notify the Architect and the Owner 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 and the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Owner shall also retain authority to order such minor changes in the Work.

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.

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an authorized employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries not caused by or due to the fault of Contractor, unavoidable casualties, adverse weather conditions that were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction, or other causes beyond the Contractor's control or which do not arise through the action or inaction of Contractor or its Subcontractor or suppliers, could not have been reasonably anticipated and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; or (4) by delay authorized by the Owner pending mediation, then the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the Owner's concurrence. The foregoing notwithstanding, the Contractor shall not be entitled to an

extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract, including Section 3.4.5 of this document. Notwithstanding anything herein to the contrary, extension of time provided for the completion of the Work shall be Contractor's sole remedy for delay, unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the Work and where to the extent that such acts of Owner continue after Contractor's notice to Owner of such interference.

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

§ 8.3.3 THIS AGREEMENT DOES NOT PERMIT THE RECOVERY OF DAMAGES BY THE CONTRACTOR FOR DELAY OR DISRUPTION OR THE RECOVERY OF DAMAGES BY THE CONTRACTOR FOR EXTENSIONS OF TIME DUE TO BAD WEATHER OR ACTS OF GOD. CONTRACTOR AGREES THAT CONTRACTOR SHALL BE FULLY COMPENSATED FOR ALL DELAYS SOLELY BY AN EXTENSION OF TIME. OWNER'S EXERCISE OF ANY OF ITS RIGHTS UNDER THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION, ITS RIGHTS UNDER ARTICLE 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 OR CORRECTION OR RE-EXECUTION OF ANY DEFECTIVE WORK, SHALL NOT, UNDER ANY CIRCUMSTANCES, BE CONSTRUED AS INTERFERENCE WITH CONTRACTOR'S PERFORMANCE OF THE WORK AND SHALL NOT ENTITLE THE CONTRACTOR TO ANY ADDITIONAL COMPENSATION.

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

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum 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 in a proposed Change Order or Construction Change Directive so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.1.3 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.

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§ 9.2 Schedule of Values

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, 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/or 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 Owner and supported by such data to substantiate its accuracy as the Architect and Owner may require.

§ 9.3 Applications for Payment

§ 9.3.1 No later than the last day of each month, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim recommendations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Upon payment by the Owner of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the Owner. The Contractor warrants that title to all materials and equipment covered by an Application for Payment will pass to the Owner upon the receipt of payment by the Contractor. 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.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER**

THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.3.4 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Owner shall have the right to reject, modify, or approve the Architect's Certificate for Payment in whole or in part, and shall have the right to make the final determination of the payment to be made to the Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The Certificate of Payment is not binding on the Owner, and the Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, and on other information known to the Owner to determine the amount to be paid to or withheld from the Contractor.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule. § 9.5.2 Intentionally Omitted.

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§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 Notwithstanding any provision contained within the Contract Documents, if Substantial Completion has not been attained within the time required by the Contract Documents, subject to extensions of time allowed under these Conditions, the Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor.

§ 9.5.6 The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to any provision of the Contract Documents or withholds in reliance on any such Contract Document provision in good faith, or withholds, in good faith, in reliance on information that has come to the attention of the Owner that Owner reasonably believes constitutes sufficient reason to withhold payment, and, no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall review the Application for Payment and the Architect's Certificate and shall make payment or withhold payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors and any other parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts. The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work, and before using any part of the payment from the Owner for any other purpose. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. The Owner shall have the right at all times to contact Subcontractors and 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 from a Subcontractor any notices of non-payment of amounts which Owner paid to Contractor in relation to the work of a Subcontractor, the Contractor shall have ten days from the notice of the claim of nonpayment from the Owner to provide evidence acceptable to the Owner that the claim of non-payment is unfounded or is the result of failure of the Subcontractor to properly perform, including failing to timely perform. If the Owner determines that the evidence provided by Contractor is not acceptable, progress payments and/or final payment may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties for such amounts as the Contractor agrees or the Owner determines are due.

Notwithstanding any other provision in the Contract Documents, neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with the terms and provisions of the Contract Documents, including Article 11 herein, and in accordance with Texas Government Code Chapter 2253. Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

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

§ 9.7 Failure of Payment

§ 9.7.1 The Contractor shall have the right to stop work for Owner's failure to pay undisputed amounts only in accordance with the provisions of applicable law.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, pursuant to the Contract the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Operation and maintenance data shall have been submitted and approved, system demonstrations have been performed, and a certificate of occupancy shall have been issued before Substantial Completion can be achieved. The Work will not be considered suitable for Substantial Completion review until all required governmental inspections and certifications have been made and posted, all final finishes within the Contract Documents are in place as required by the Specifications, and there shall have been a completion of and acceptance by Owner of all major punch-list items and a majority of minor items of a cosmetic nature, so that the Owner could occupy or otherwise utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under the Owner) normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within the number of calendar days following the date of Substantial Completion specified in the GMP Amendment, which said number of calendar days will not exceed sixty (60). 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.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the

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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. 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 those notes 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 Contractors, Architects, Consultants and Owner's comments incorporated in only one list.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine dates of Substantial Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents and shall be adjusted as the Owner deems necessary to cover liquidated damages that Owner believes are or will be owed as a result of the Contractor's failure to timely achieve Substantial Completion.

§ 9.8.5.1 After the date of Substantial Completion of the project as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed the number of calendar days in the GMP Amendment (which shall not exceed 60 days), unless extended by mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion. Failure by the Contractor to complete such corrections within the stipulated time may 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 thirty (30) additional days, the Owner may initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14.2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies within thirty (30) days after the date of Substantial Completion, unless extended by mutual agreement or provision of the contract, may be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more

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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.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer, if such consent is necessary, and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect or Owner.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, in determining the payment to be made to Contractor. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 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 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 Owner and Architect prior to certification of such payment. 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
(Paragraphs deleted)
Owner.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 Contractor shall be responsible for providing such security on the Work site as necessary to protect against loss or damage to materials or the Work.

§ 10.1.3 Contractor shall be responsible for providing safe paths of travel for the public, or any employee, invitee, agent or representative of Owner who has the right to access the Project or any portion of the Project prior to completion of Contractor's construction activities. Contractor shall confer with Architect and Owner on the travel route or routes to be used. Unless otherwise agreed by the Owner and Contractor, the safe access route shall include access from parking areas and public sidewalks, and Contractor shall reroute such access as necessary during the progress of the construction to maintain safe access.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students, and other persons on Owner's premises, and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss determined by the applicable insurance carrier to be covered under property insurance required by the Contract Documents) to property

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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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of others for whose acts the Owner is legally responsible, notice of the injury or damage, whether or not insured, shall be given by the Contractor to the Owner within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

§ 10.2.8.1

If the Owner suffers injury or damage to person or property because of an act or omission of the Contractor, or of others for whose acts the Contractor is legally responsible, notice of the injury or damage, whether or not insured, shall be given by the Owner to the Contractor within a reasonable time in sufficient detail to enable the Contractor to investigate the matter.

§ 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 in writing.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Intentionally Omitted.

§ 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.

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§ 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 Intentionally Omitted.

§ 10.3.7 Except as may be required by the Contract Documents, the Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance, except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws or as required by the Contract Documents. In the event the Contractor engages in any of the activities prohibited in this Section 10.3 and its subparts, to the fullest extent permitted by law, the Contractor hereby indemnifies and holds harmless Owner and all of its respective officers, directors, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section 10.3 and its subparts. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.3.8 For purposes of the Contract, the term "hazardous substance" shall mean and include, but shall not be limited to, any substances or materials named in Section 10.3 or any of its subparts and any element, constituent, chemical, substance, compound or mixtures, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, by-law or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including with limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), The Marine Protection Research and Sanctuaries Act ("MPRSA"), the Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes, including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with Section 10.3 and its subparts based on the law in effect at the time its services are rendered and to comply with any amendments to those laws, for all services rendered after the effective date of any such amendments.

(Paragraphs deleted)

§10.4 ASBESTOS OR ASBESTOS CONTAINING MATERIALS

§10.4.1 Certification of Asbestos Free Project:

§10.4.1.1 Contractor shall submit to the Architect a letter addressed to the Owner certifying that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. Certification letters shall be dated, shall reference this specific Project, and shall be signed and notarized an officer of the construction company.

§10.4.1.2 Certification shall further state that should asbestos fibers provided by Contractor or one of Contractor's subcontractors or suppliers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, that Contractor shall be responsible for determining which materials contain asbestos fibers and shall take corrective action to remove those materials from the Project at no additional cost to the Owner.

§10.4.1.3 Final Payment shall not be made until this letter of certification has been received.

§10.5 LEAD FREE MATERIALS IN POTABLE WATER SYSTEM

§10.5.1 Prior to payment of retainage and final payment, the Contractor involved with the potable water system shall furnish a notarized statement certifying that the potable water system is "lead-free."

§ 10.6 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.

ARTICLE 11 INSURANCE AND BONDS

§ 11.0 INSURANCE GENERAL REQUIREMENTS

§ 11.0.1 No Work will be commenced, and no equipment or materials can be shipped until all bond and insurance requirements required of Contractor in this Article 11 have been satisfied, satisfactory evidence of the bonds and insurance has been provided to and approved by the Owner, 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 the Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract.

§ 11.0.2 All insurance required by this Article 11 of the Contractor and/or its Subcontractors shall be endorsed to reflect that the required insurance is primary over any other applicable insurance held by Owner. Any insurance maintained by the Owner shall be in excess of such insurance and shall not contribute with such primary insurance.

§ 11.0.3 All liability and warranty insurance that is required by this Article 11 of the Contractor and/or its Subcontractors, including, without limitation, the Commercial General Liability insurance, the Automobile Liability insurance, and the umbrella or excess insurance, shall name the Owner (including its officers, elected officials, employees, and volunteers), the Architect, and the Architect's consultants as Additional Insureds.

§ 11.0.4 Nothing contained in this Article 11 shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.5 The Contractor and its Subcontractors shall provide an endorsement to the Worker's Compensation policy which grants waiver of subrogation in favor of the Owner.

§ 11.0.6 If insurance required of the Contractor and/or its Subcontractors by this Article 11 is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by the insurance. If the Owner is damaged by the failure of the Contractor or any of its Subcontractors to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. With regard to Builder's Risk insurance, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by the insurance if the covered loss arises from the negligence or fault of the Contractor, the Contractor's agent, an employee of the Contractor, a subcontractor of the Contractor, or any entity for which the Contractor is responsible.

§ 11.0.7 The Contractor shall be responsible for verifying insurance coverage in the required amounts of all Subcontractors employed by or used by the Contractor.

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance (or cause to be purchased and maintained in the case of Subcontractors) of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, described herein, or described 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.

§ 11.1.2 The insurance required of the Contractor and its Subcontractors by Section 11.1.1 shall include, but not be limited to, the following types of insurance and coverages, and shall be written for not less than the following limits of liability or as otherwise specified in the Contract Documents or required by law, whichever coverage is greater;

TYPE OF INSURANCE

LIMIT OF LIABILITY

Commercial General Liability (CGL)	\$2,000,000.00	General Aggregate
	\$1,000,000.00	Each Occurrence

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\$2,000,000.00	Products and Completed Operations
\$300,000.00	Damage to Rented Premises – each occurrence
\$5,000.00	Medical Expense (any one person)
\$1,000,000.00	Personal and Adv. Injury

For Bodily Injury and Property Damage, coverage to remain in place until Final Completion, however if Warranties are applicable, coverage shall remain in place until the expiration of the Warranties.

For Products and Completed Operations, coverage is to be maintained through annual renewals for a period of 5 years after Final Payment; Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period.

Automobile Liability	\$1,000,000.00	Combined Single Limit (ea. accident)
Excess/Umbrella Liability	\$10,000,000.00	Each Occurrence
	\$10,000,000.00	Aggregate
Workers Compensation	Statutory	
	\$1,000,000.00	E.L. Each Accident
	\$1,000,000.00	E.L. Disease – Ea. Employee
	\$1,000,000.00	E.L. Disease – Policy Limit

§ 11.1.2.1 Other than property insurance provided by Contractor such as Builder’s Risk and Boiler and Machinery Insurance whose coverage terminates by terms of the insurance when substantial completion is reached, coverages required of the Contractor and its Subcontractors by this Article 11, whether written on an occurrence or claims-made basis, shall, at a minimum, be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. Coverages written on a claims made basis shall be continuously maintained (by renewal or extended reporting period) for not fewer than thirty-six (36) months following the date of final payment or the Work is accepted by Owner, whichever maintains the coverage for the longest time. With respect to the Contractor’s completed operations coverage, coverage shall be continuously maintained until the expiration of the period for maintenance of completed operations coverage as specified above.

§ 11.1.2.2 The insurance required by this Article 11 shall contain no specific limitations on the coverage afforded the Additional Insureds.

§ 11.1.3 Certificates of insurance in a form acceptable to the Owner and naming the Owner (including its officers, elected officials, employees, and volunteers), the Architect, and their respective consultants as Additional Insureds shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Article 11 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Contractor understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirement of this Article shall be a cause for termination of this Contract, under the provisions of the termination clause.

Satisfactory evidence of insurance required in this Article 11 shall be provided to Owner not later than five (5) business days after execution of the Contract by Owner.

§ 11.1.4 The Contractor shall, in addition to other requirements of the Contractor contained in this Article 11 or elsewhere in the Contract Documents, cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect’s consultants as additional insureds for claims caused in whole

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or in part by the Contractor's or any of its Subcontractors' negligent acts or omissions during the Contractor's and/or Subcontractors' operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's or any of its Subcontractors negligent acts or omissions during the Contractor's and/or Subcontractors' completed operations.

§ 11.1.5 If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of paragraph 11.1.6 hereof shall apply.

§ 11.1.6 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 required of this Article 11 have been received by Owner and the Architect, and a written notice to proceed has been issued.

§ 11.1.7 As an alternative and at Owner's option, Owner may elect to furnish or to arrange for Contractor any part or all of the insurance required this Article 11. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefore, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§11.1.8 WORKERS' COMPENSATION INSURANCE COVERAGE

A. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, 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.

Persons providing services on the project ("subcontractor" in § 406.096) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes without limitations, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. 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.

C. The Contractor must provide a certificate of coverage to the Owner and Construction Manager, if any, prior to being awarded the contract.

D. 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 and Construction Manager, if any, showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the Owner and Construction Manager, if any:

(1) a certificate of coverage, prior to that person beginning work on the project, so the

Owner and Construction Manager, if any, will have on file certificates of coverage showing coverage for all persons providing services on the project: and

- (2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Contractor shall notify the Owner and Construction Manager, if any, 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.
- H. 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.
- I. 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, Section 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 (1) year thereafter;
 - (6) notify the Owner and Construction Manager, if any, in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner and Construction Manager, if any, that all employees of the

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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.

- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.
- L. The coverage required 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.

§ 11.1.9 Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.10 CONTRACTOR'S BUILDER'S RISK INSURANCE

§ 11.1.10.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.1.10 to be covered. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Owner, the Architect, the Contractor, and the Contractor's subcontractors shall be named as insureds in the builder's risk policy.

§ 11.1.10.1.1 The required property/builder's risk insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.1.10.1.2 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles provided that the covered loss arises from the negligence or fault of the Contractor, the Contractor's agent, an employee of the Contractor, a subcontractor of the Contractor, or any entity for which the Contractor is responsible.

§ 11.1.10.1.5 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.1.10.1.4 In the event of partial or full occupancy by the Owner prior to substantial completion of the project, the Contractor shall notify the insurance carrier and obtain a "Use and Occupancy" waiver to prevent invalidation of such insurance by occupancy. Certificates of endorsements for this waiver shall be furnished to the Owner and the Architect.

§ 11.1.11 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner or until no person or entity other than the Owner has an insurable interest in the insured objects; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.1.12 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of 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 or expiration. Upon receipt of 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 Waivers of Subrogation

§ 11.2.1 The Contractor waives all rights against (1) the Owner and any of the Owner's subcontractors, sub-subcontractors, officers, elected officials, agents, and employees; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as the Contractor may have to proceeds of such insurance. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from the Contractor's subcontractors and sub-subcontractors. The policies of insurance purchased and maintained by the Contractor shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraphs deleted)

§11.3 Adjustment and Settlement of Insured Loss

§ 11.3.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the party to whom insurance proceeds are paid as fiduciary and made payable to said party as fiduciary for the insureds, as their interests may appear. The party to whom insurance proceeds are paid shall pay the Architect and, as applicable, the Owner or the Contractor their just shares of insurance proceeds received by the party to whom the insurance proceeds are paid, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor, prior to proceeding with any work hereunder, shall furnish Owner with statutory payment and performance bonds covering faithful performance of the Contract and payment obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum with a surety or sureties authorized to conduct an insurance business in the State of Texas and licensed, listed, and approved by the State of Texas to issue surety bonds in the State, and otherwise acceptable to the Owner. The surety or sureties shall be listed as an approved surety by the U.S. Treasury Department. Notwithstanding anything herein to the contrary, all bonds shall conform to the requirements of Chapter 2253, Texas Government Code, as amended. The bonds shall be written on forms approved for use by Owner and shall be attached to and made a part of the Contract. The surety or sureties shall provide on request such other information as necessary to document net worth, stability, total bonding capacity, and projects under coverage, to demonstrate adequate financial capacity for this Project. If the Contract Sum exceeds the underwriting limitation of the Surety on the most recent list of acceptable sureties, the Contractor shall provide the Owner with evidence that the excess is protected by re-insurance or co-insurance in a form and amount acceptable to the Owner. Owner reserves the right to approve the surety or sureties proposed by Contractor. If any surety on any bond becomes insolvent or is unable to perform its obligations thereunder, the Contractor shall immediately furnish replacement bonds, or if such bonds cannot be obtained, equivalent security reasonably acceptable to Owner to protect the interests of Owner and persons furnishing labor and materials to the Project. Proof of valid payment and performance bonds shall be provided to the Owner no later than 3 business days from the date the Construction Manager executes an Amendment to this Agreement which establishes the Guaranteed Maximum Price.

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

§ 11.4.3 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the Contract. 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 for review and decision.

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

§ 11.4.5 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.6 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient or insolvent, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 11.4.7 The Contractor's failure to abide by the requirements of this Section 11.4, including its subparts, shall be a material breach of the Contract.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 and/or its subparts, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under the Contract Documents, 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, by repairing or replacing it, as reasonably determined by the Owner, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within the time specified herein or, if no deadline to complete the corrective action is specified, a reasonable time after receipt of notice from the Owner or Architect, or if the Contractor fails to make the written response to an Owner's notice within the time specified herein in this § 12.2.2.1 and its subparts or § 3.5.3 and its subparts, the Owner may correct it and all costs for doing so will be assessed against the Contractor, and Owner's actions to correct the nonconforming Work will not constitute a waiver of any warranties or

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rights the Owner might possess. Any provision in the Contract Documents to the contrary notwithstanding, the Contractor's obligations under this Section 12.2.2 and/or its subparts, are in addition to any other warranty obligations or corrective action obligations provided by the Contract Documents, this Agreement or law, including warranties provided by subcontractors, suppliers and manufacturers. Contractor shall assign all assignable subcontractor, supplier and manufacturer's warranties affecting the Work or any portion to Owner as a condition to final payment. Owner may enforce any warranty obligations or any corrective action obligations separately, concurrently or successively. The deadlines for certain actions required herein of the Contractor are as follows:

- .1 The Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of defect within twenty-four (24) hours of receipt of the Owner's written notice and shall provide the Owner a written proposed schedule to conduct corrective work within three (3) business days of receipt of the Owner's written notice. Corrective work shall not interfere with the Owner's normal operation and use of the Work, unless expressly approved by the Owner.
- .2 For corrective work which is not a life/safety issue or which will not, by the nature of the defect, cause subsequent damage to the building or other Work, corrective work shall be completed within fourteen (14) days.
- .3 For corrective work which by its nature may cause subsequent damage to the building or other Work, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days. The Contractor shall appropriately complete all corrective work relative to subsequent damage caused by a defect.
- .4 For corrective work related to a life/safety issue or which affects services to, and ordinary use of the Building, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days.
- .5 The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.

§ 12.2.2.2 The one (1)-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 (1)-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 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 under the Contract Documents. The corrective remedies set forth in this Section 12.2 or in Section 3.5.3 herein are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§ 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. Contractor shall pay all costs and expenses incurred by Owner in the evaluation of and determination to accept such defective Work, as well as the amount by which the value of the Work is diminished by the defect. If any such acceptance occurs

prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the costs described above and the diminished value of the defective Work. If acceptance occurs after final payment, Contractor will pay to Owner the appropriate amount within thirty (30) days after demand.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Venue

§ 13.1.1 Governing Law.

The Agreement, the Contract, and the Contract Documents shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents.

§ 13.1.2 Venue.

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect 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 and other portions of the Contract Documents reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as provided in the Agreement.

§ 13.6 CONTRACTOR'S RECORDS

Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

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 sixty (60) 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, which are the sole grounds for termination under this Subparagraph 14.1.1:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, subject to any right of Owner to withhold funds or suspend payment under the Contract; or
- .4 The Owner has failed to furnish to the Contractor the information 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 one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365)-day period, whichever is fewer.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner, as Contractor's sole compensation and damage, payment for Work actually executed to the date of termination, reasonable overhead and profit on Work actually executed, and reasonable and necessary costs incurred by Contractor for demobilization of Contractor's personnel and subcontractors as a direct result of such early termination, which are established to the reasonable satisfaction of Owner. In any event, the amount paid to the Contractor under this § 14.1.3 shall not exceed the amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days'

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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 refuses or fails to supply enough properly skilled workers or proper materials to perform and/or complete the Work in a diligent, efficient, workmanlike or timely manner;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 fails to perform the Work in accordance with the Contract Documents or makes fraudulent statements;
- .6 makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee for the Contractor or any substantial part of its property, commences any action relating to the Contractor under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Contractor any such action or the Contractor by any act indicates its consent to or approval of any trustee for the Contractor or any substantial part of its property or suffers any receivership or trustee to continue undischarged;
- .7 repudiates the Contract; or
- .8 otherwise is guilty of substantial breach of a provision of the Contract Documents or does not fully comply with a material obligation under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, 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:

- .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, including, but not limited to, making demand on the surety to perform the Work.

§ 14.2.3 When the Owner terminates the Contract or the Contractor's right to perform the Work under the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 In the event of a termination for any of the reasons listed in § 14.2.1 above, the maximum amount of compensation and damages available to the Contractor shall be payment for Work properly and actually executed to the date of termination plus reasonable overhead and profit on such work. In any event, the compensation and damages available to the Contractor shall not exceed the amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.2.5 If the costs of finishing the Work following termination by the Owner for cause, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner within thirty (30) days after demand by Owner. This obligation for payment shall survive termination of the Contract. The Contractor shall not be entitled to any of the unpaid balance of the Contract Sum in the event of termination by the Owner for cause except for payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination. In the event of the termination of the Contract by the Owner for cause, the Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination as the Contractor's sole and exclusive remedy. The Contractor shall not be entitled to any additional compensation or damages of any kind from or against the Owner. Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts or damages of any kind.

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§ 14.2.6 Partial or Whole Termination for Cause. In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, terminate any part of the Work or any subcontract for any reason whatsoever by giving written "Notice of Termination" to Contractor specifying the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If a part of the Work or any subcontract is so terminated, Owner shall incur no liability to Contractor by reason of such termination, except that Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract), and to reasonable and necessary costs incurred by Contractor for demobilization of Contractor's personnel and subcontractors as a direct result of such early termination, which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts. The Contractor shall not be entitled to any additional compensation or damages of any kind from or against the Owner. Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts or damages of any kind. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. No amount shall be allowed the Contractor hereunder unless, within ninety-one (91) days after all compensable costs of Contractor shall have become liquidated and determinable, and not thereafter, Contractor shall submit in writing to the Owner claim in the amount stated with such supporting particulars as the Owner may request. Upon receipt of such "Notice of Termination," Contractor shall cooperate fully with the Owner in minimizing the cost to the Owner of such termination and shall, as directed by the Owner, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties. In addition to other payments due to Contractor as a result of a partial or whole termination for cause, Contractor shall be paid for any labor, materials, or other costs incurred by Contractor that are associating with protecting improvements in relation to said termination, but only if said protection of improvements has been directed by the Owner in writing.

§ 14.2.7 It is recognized that (i) if any order for relief is entered on behalf of or against the Contractor pursuant to Title 11 of the United States Code, (ii) if any other similar order is entered under any other debtor relief laws, (iii) if the Contractor makes a general assignment for the benefit of its creditors, or (iv) if a receiver is appointed for the benefit of credits, or (v) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate the Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, the Owner, in addition to other rights and remedies hereunder, shall be entitled to request the 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 after delivery of the request shall entitle the Owner to terminate the Contract or Contractor's right to perform thereunder and to the accompanying rights set forth above in Sections 14.2.1 through 14.2.5 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to make demand on the surety or proceed with the Work with its own forces by assignment of the subcontractors or with other contractors on a time and material or other appropriate basis, the cost of which will be back-charged against the Contract Sum. If Owner performs the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance, the Contractor shall pay the difference to the Owner within thirty (30) days after demand by Owner. If Owner (rather than the surety) performs the Work the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Initial Decision Maker, upon request by Owner. The Contractor's obligation for payment shall survive termination of the Contract and termination of Contractor's right to perform the Work under the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum shall be subject to equitable adjustment for increases in the cost caused by suspension, delay, or interruption under Section 14.3.1 lasting more than ninety (90) consecutive days. Such adjustment shall be Contractor's sole remedy against the Owner in the event of a suspension under Section 14.3.1. No adjustment shall be made to the extent

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- .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, any part of the Work, or any subcontract 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 and actually executed to the date of termination in accordance with the payment terms set out in the Agreement, and reasonable and necessary costs incurred by the Contractor for demobilization of the Contractor's personnel as a direct result of such early termination, which are established to the reasonable satisfaction of the Owner, but Owner shall not be responsible for the payment of any portion of the Contractor's unearned fee, overhead or profit, or any other amounts or damages of any kind. Contractor's right to payment and Owner's obligation to pay Contractor are subject to the terms and provisions of the Contract.

§ 14.4.3.1 Partial Termination for Convenience. In the event of a partial termination or the termination of a subcontract for the Owner's convenience, Contractor shall continue to prosecute the part of the Work not terminated. If a part of the Work or any subcontract is so terminated for the Owner's convenience, Owner shall incur no liability to Contractor by reason of such termination, except that Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract), and to reasonable and necessary costs incurred by Contractor for demobilization of Contractor's personnel as a direct result of such early termination, which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts. The Contractor shall not be entitled to any additional compensation or damages of any kind from or against the Owner. Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts or damages of any kind. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. No amount shall be allowed the Contractor hereunder unless, within ninety-one (91) days after all compensable costs of Contractor shall have become liquidated and determinable, and not thereafter, Contractor shall submit in writing to the Owner claim in the amount stated with such supporting particulars as the Owner may request. Upon receipt of written notice from the Owner of such partial termination or termination of a subcontract for the Owner's convenience, Contractor shall cooperate fully with the Owner in minimizing the cost to the Owner of such termination and shall, as directed by the Owner, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties. In addition to other payments due to Contractor as a result of a partial termination for convenience, Contractor shall be paid for any labor, materials, or other costs incurred by Contractor that are associating with protecting improvements in relation to said termination, but only if said protection of improvements has been directed by the Owner in writing.

§ 14.5 TERMINATION BY THE OWNER FOR INADEQUATE FUNDING

§ 14.5.1 If this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be made by written notice. Notwithstanding any provision to the contrary in any of the Contract Documents, the Owner is not required to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally Omitted

§ 15.1.3 Notice of Claims

§ 15.1.3.1 CONTRACTOR MUST NOTIFY OWNER AND ARCHITECT IN WRITING (A) NOT LATER THAN NINETY DAYS AFTER OCCURRENCE OF THE EVENT GIVING RISE TO A CLAIM OR (B) NOT LATER THAN NINETY DAYS AFTER THE CONTRACTOR FIRST RECOGNIZES, OR SHOULD HAVE RECOGNIZED, THE CONDITION GIVING RISE TO A CLAIM, WHICHEVER IS LATER. WITHIN A REASONABLE PERIOD OF TIME, BUT NOT LATER THAN TWENTY-ONE (21) DAYS AFTER GIVING NOTICE OF A CLAIM, CONTRACTOR MUST PROVIDE COMPLETE AND DETAILED DOCUMENTATION CONCERNING THE NATURE AND AMOUNT OF THE CLAIM, TO THE EXTENT SUCH INFORMATION IS REASONABLY AVAILABLE, TO THE OWNER AND ARCHITECT. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION 15.1.3.1 CONSTITUTES A WAIVER OF CONTRACTOR'S CLAIM.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Sections 3.5.3 or 12.2.2, shall be initiated by notice to the other party. In such event, no recommendation or 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 or other provisions of the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments that are not in dispute in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Owner'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 final decision of the Owner concerning a Claim.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice shall be given to the Owner and Architect before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 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, written notice shall be given to the Owner and Architect. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Claims for increase in the contract time shall set forth in detail the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the work, the date upon which each cause of delay ceased to affect the progress of the work and the number of days increase in the contract time claimed as a consequence of each such cause of delay. Additionally, any Claim for additional time based on adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Claims for an extension of time pursuant to this Subparagraph shall be submitted to the Architect and Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

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(Paragraphs deleted)

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor against the Owner, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Sections 3.5.3 and/or 12.2.2 or arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker unless otherwise agreed upon in writing by the parties following the submission of a Claim. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision/recommendation shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor. If an initial decision/recommendation has not been made within thirty (30) days after the Claim has been referred to the Initial Decision Maker, the Contractor may demand mediation without a decision/recommendation having been made. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide or make recommendations concerning disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Initial Decision Maker is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the expense of the party which does not prevail in relation to the Claim.

§ 15.2.4 Intentionally Omitted.

§ 15.2.5 The Initial Decision Maker's initial decision/recommendation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both. **The initial decision shall serve as the Initial Decision Maker's recommendation for the resolution of a Claim but shall not be final and binding on the parties. Upon receipt of the initial decision, the Owner will make its final decision concerning the Claim. The Owner may take any action with regard to the Claim and the initial decision as it deems appropriate, including but not limited to rejecting, approving, or modifying the Initial Decision Maker's recommendation. If an affected party disagrees with the Owner's final decision, the party may request non-binding mediation of the Claim and, if the parties fail to resolve their dispute through mediation, proceed to litigation.**

§ 15.2.6 Either party may request mediation of the Owner's final decision on a Claim at any time.

(Paragraph deleted)

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

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

§ 15.3 Mediation

§ 15.3.1 Any and all claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to non-binding mediation as a condition precedent to litigation.

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§ 15.3.1.1 Notwithstanding any provision in the Contract Documents to the Contrary, the Owner may, at any time and with no conditions precedent, assert a Claim, dispute, or other matter in controversy against the Contractor or contend that the Contractor has committed a material breach of this Agreement and request mediation as provided by this Section 15.3. Claims that the Owner may possess against the Contractor are not required to be submitted to the Initial Decision Maker.

§ 15.3.2 A request for mediation shall be made in writing and delivered to the other party to the Contract. If the parties have not selected a mutually acceptable mediator at the time the request for mediation is made, then the requesting party may suggest a mediator. The non-requesting party has ten (10) days after receipt of the request to respond to the requesting party in writing either accepting the mediator identified by the requesting party, or suggesting a different mediator. If such notice is not timely made, then the mediator suggested by the party requesting mediation will be deemed the selected mediator. If a different mediator has been suggested by the non-requesting party, and the parties are unable to agree on a mediator within ten (10) days after the notice suggesting a different mediator is given, then the parties shall request the Initial Decision Maker to select a mediator, and this selection will be binding on both parties. The request for mediation may be made concurrently with the filing of litigation but, in such event, mediation shall proceed in advance of the litigation proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 Intentionally Omitted.

§ 15.3.4 The parties shall share the mediator's fee equally, unless the parties agree otherwise. The mediation shall be held in the place where the Project is located or in the nearest City to the Project, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 INTENTIONALLY OMITTED

§ 15.5 LITIGATION

§ 15.5.1 For any Claim or other dispute of any kind between the parties, the method of "binding dispute resolution" shall be litigation in the exclusive venue described in § 13.1 and its subparts.

§ 15.5.2 All references to "arbitration" in the General Conditions or in any other Contract Document shall be considered as deleted, rendered null and void, and shall be given no effect.

ARTICLE 16 ADDITIONAL PROVISIONS

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

§ 16.2 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed work not in accordance with the Contract Documents shall not prevent the Architect or the Owner from insisting that the faulty work be corrected to conform with the Contract Documents and the Contractor shall correct same.

§ 16.3 The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

§ 16.4 The Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests, encumbrances, statutory or common law claims filed by the Contractor, suppliers, subcontractors, or anyone claiming by, through, or under the Contractor, suppliers or subcontractors for items covered by payments made by the Owner to Contractor.

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§ 16.5 Execution & Signatures. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A digital, electronic, or facsimile signature may be used in place of an original signature and shall carry the same weight and effect as an original signature.

LONE OAK INDEPENDENT SCHOOL DISTRICT

POGUE CONSTRUCTION CO., L.P., a TEXAS LIMITED LIABILITY PARTNERSHIP acting by and through BEN POGUE, L.C., a TEXAS LIMITED LIABILITY COMPANY, GENERAL PARTNER

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

Justin Ramm, President, Board of Trustees
(Printed name and title)

Benjamin P. Pogue, Sole Member of Ben Pogue, L.C.,
a Texas Limited Liability Company
(Printed name and title)

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 8th day of December in the year 2021
(In words, indicate day, month, and year.)

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

Lone Oak Independent School District
8162 Hwy. 69 South
Lone Oak, Texas 75453
903.662.5427: T
903.662.5290: F

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

Pogue Construction Co., LP
1512 Bray Central Dr., #300
McKinney, Texas 75069
972.529.9401: T

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

Lone Oak ISD 2021 Bond Program (District-Wide Additions and Renovations)

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

Claycomb Associates, Inc.
6600 LBJ Frwy., Ste. 200
Dallas, Texas 75240
972.233.6100: T

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

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

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

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 The Initial Information for the Project is set forth in this Section 1.1 to the extent known at the time this Agreement is executed.

(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

(Paragraphs deleted)

Intentionally Omitted.

§ 1.1.2 The Project consists of the following*:

- Buffalo Stadium Improvements
 - Includes new turf and renovations to press box, bleachers, restrooms, concessions, and parking.
- Baseball and Softball Complex
 - Includes new baseball and softball fields with bleachers.
- District-Wide Additions and Renovations
 - Additions and renovations relating to classrooms, science labs, restroom multipurpose gym facility, career and technical education, band hall, locker rooms, weight room, storage, parking, driveways.

- * It is understood and agreed that the Owner reserves the right, at its sole discretion, to remove or delete any of the above-listed parts of the Project from this Agreement and prior to the approval of the Owner's Board of Trustees of the GMP Amendment related to the affected part of the Project. In that event, the Owner will provide the Construction Manager with written notice of the part(s) of the Project removed or deleted from this Agreement, and, unless otherwise specifically agreed upon in advance and in writing, the Construction Manager will not be entitled to a fee, any damages, or any compensation of any kind based on any such removed or deleted part.

§ 1.1.2.1 The construction of the individual parts of the Project listed above will be conducted in "phases." An individual part of the Project (eg. Buffalo Stadium Improvement) could constitute a "Phase" and any agreed-upon combinations of individual parts of the Project could constitute a "Phase". The Owner shall have the sole right and absolute discretion to select which part(s) are included in each and every Phase of the Project. A separate GMP Amendment for each Phase must be submitted by the Construction Manager for the Owner's consideration and the various separate agreed-to GMP Amendments will control with regard to each applicable Phase. Notwithstanding the foregoing, savings in any one Phase can be applied to any unanticipated expenses in any other Phase so long as the entire Project does not exceed the cumulative GMP for the entire Project.

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

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

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:

The Substantial Completion Date shall be as stated in the Guaranteed Maximum Price Amendment.

- .4 Other milestone dates:

§ 1.1.5

(Paragraphs deleted)
Intentionally Omitted.

§ 1.1.6

(Paragraphs deleted)
Intentionally Omitted.

(Paragraph deleted)

§ 1.1.7 Other Project information:

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

None

§ 1.1.8

(Paragraphs deleted)
Intentionally Omitted.

§ 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 Architect.

§ 1.1.10

(Paragraphs deleted)
Intentionally Omitted.

§ 1.1.11 The Architect's representative:

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

George DeJohn

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

Danny Scoggins, Jr.

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

None

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

See Article 9 herein.

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

N/A

§ 1.2 The Owner and Construction Manager recognize that the Initial Information may materially change.

§ 1.3 The Construction Manager's representative shall not be changed without ten (10) days' prior written notice to the other party.

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ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. 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. 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/or 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 or any amendments to this Agreement, this Agreement and any amendments to it shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 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 furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. 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. The Owner agrees to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply in all respects. As between the Owner and the Construction Manager, the term "Contractor" as used in the A201-2017 General Conditions document pertaining to the Project, as modified by the Owner, or as used in any of the other Conditions of the Contract shall refer to or be understood to mean the "Construction Manager".

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. As between the Owner and the Construction Manager, the term "Contractor" as used in the A201-2017 General Conditions document pertaining to the Project, as modified by the Owner, or as used in any of the other Conditions of the Contract shall refer to or be understood to mean the "Construction Manager".

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The foregoing notwithstanding, the Construction Phase cannot commence, and no construction services may be performed, until the Payment and Performance Bonds, and the Construction Manager's insurance, as required by the Contract Documents, have been provided by the Construction Manager and approved by the Owner. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. All services provided by the Construction Manager under this Agreement and the Contract shall be performed with the level of care, diligence, competence and skill generally prevailing for such services among construction managers at-risk performing similar services for projects of similar scope and complexity in Texas.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services, and the preparation of schedules, estimates, and other Preconstruction Services shall be performed with the level of diligence, competence and skill generally prevailing for such services among construction managers at-risk performing similar services for projects of similar scope and complexity in Texas. The Construction Manager shall use qualified and experienced professionals

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and exercise reasonable care in preparing schedules, estimates, and other Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The 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 in writing to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager, or of which the Construction Manager knew or should have known. The Construction Manager shall, in writing, certify to the Owner that the Project has been constructed in accordance with the construction documents prepared by the Architect and shall execute the Certification of Project Compliance form developed by the Texas Education Agency. The certification shall be in a form that is acceptable to the Owner.

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

§ 3.1.3 Consultation

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

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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 to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the 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 Project, if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence and the Owner and Architect were not informed of such conflicts as required by Subparagraph 3.1.3.4. 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.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager 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.

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall promptly inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and promptly make recommendations for corrective action, which shall include recommendations to reduce costs or otherwise maintain the Project budget.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop subcontractors' and suppliers' interest in the Project. All subcontracts shall be awarded pursuant to the procedures set forth in Article 9 herein.

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered 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 in accordance with applicable procurement requirements and the Contract Documents. Upon the establishment of the Guaranteed Maximum

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Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of allowances and a statement of their basis;
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 herein, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, the Construction Manager's compensation for General Conditions; and
- .5 The date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

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 fixed fee basis.

§ 3.2.4 The Owner shall be allowed not fewer than thirty (30) days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price proposal.

§ 3.2.5 The Construction Manager shall issue a report to Owner and Architect with its proposal stating that the Construction Documents are generally consistent with the Guaranteed Maximum Price assumptions. The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall promptly notify the Owner and Architect in writing 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 the Owner is exempt, whether by virtue of its status as a governmental entity and/or a Texas independent school district or otherwise. Such taxes **shall not** be reimbursable costs under any provision in any of the Contract Documents.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to 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.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, 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 modified by the Owner.

§ 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, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress 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.

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 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide a written statement that funds are available and have been authorized for the full Contract amount for the Project or applicable phase of the Project. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. 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. The Owner shall 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 written request for such information or services. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and 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 agreed upon by the Owner and the Construction Manager.

§ 4.1.4.3 The Owner, when such services are necessary, shall furnish services agreed upon by the Owner and the Construction Manager of geotechnical engineers. The Owner shall have the sole authority to select any such geotechnical engineers.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents or as agreed upon by Owner and Construction Manager with reasonable promptness.

§ 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, 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(s) 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(s) shall have no implied authority. Such authorized representative(s) 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 and, up to the limit of the authority delegated by the Owner's Board of Trustees, the Owner's authorized representative(s).

§ 4.2.1 Intentionally Omitted.

Init.

§ 4.3 Architect

The Owner has retained an Architect to provide services, duties and responsibilities in connection with this Project. The Construction Manager's services shall be provided in conjunction with the services of the Architect retained by the Owner. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

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.)

The Construction Manager's Preconstruction Phase Services fee shall be 0.15% of the approved Total GMP. This is a "not to exceed" amount.

§ 5.1.2 The

(Paragraphs deleted)

dollar amount of the Preconstruction Phase Services ("PPS") fee for a Phase of the Project *(see § 1.1.2.1 above)* shall be calculated at the time the GMP Amendment for that Phase is approved and executed by the Construction Manager and the Owner. The Construction Manager will, within 10 days of the execution of the applicable GMP Amendment, invoice the Owner based on the percentage amount of the Preconstruction Phase Services that have been performed by the Construction Manager as the date that the applicable GMP Amendment is executed. The balance of the applicable PPS fee shall be invoiced to the Owner by the Construction Manager at the beginning of the Construction Phase of the Project Phase to which the PPS fee applies.

(Table deleted)

§ 5.1.2.1 for the amount of the Preconstruction Phase Services fee(s) described above 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.

(Paragraph deleted)

§ 5.2 Payments

§ 5.2.1 Intentionally Omitted.

§ 5.2.2 Payments are due and payable

(Paragraphs deleted)

as determined by the Texas Prompt Payment Act, Chapter 2251 *et seq.* Texas Government Code, as amended. Payments for Preconstruction Phase Services that are overdue shall accrue interest at the rate specified in Texas Government Code § 2251.025(b).

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 Actual Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

The Construction Manager's Fee shall be One and One-half Percent (1.5%) of the Actual Cost of the Work. For purposes of calculating the Construction Manager's Fee, the term "Actual Cost of the Work" refers to construction costs only and does not include the costs of payment or performance bonds, insurance (General Liability, Builder's Risk, etc.).

The total cost of Indirect Costs/General Conditions shall not exceed 3.43% of the Actual Cost of the Work. For purposes of calculating the Indirect Costs/General Conditions, the term "Actual Cost of the Work" refers to construction costs only and *does not* include the costs of payment or performance bonds, insurance (General Liability, Builder's Risk, etc.), Indirect Costs/General Conditions, or the Construction Manager's Fee. In the event that the scope of the Project or a Phase is reduced from the scope in the Owner's Request for Proposal, the Construction Manager and the Owner will meet and discuss in good faith whether or not to renegotiate this 3.43% cap.

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

Any increases in the Actual Cost of the Work that are approved by the Owner through a written change order and are actually incurred shall be subject to the Construction Manager's Fee 1.5% described in Section 6.1.2 above.

Any provision in the Contract Documents to the contrary notwithstanding, if the Construction Manager's Fee is a lump sum and the Contract is terminated prior to completion of the entire scope of the Work, and the Construction Manager is entitled to payment for Work performed under the terms of the Contract, then the Construction Manager's Fee payable to Construction Manager for Work performed in accordance with the Contract Documents will be a percentage of the lump sum based on the percentage completion of the Work at the time of termination, subject to the Guaranteed Maximum Price limitation adjusted to the percentage of completion.

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

See § 7.1.4 of A201-2017, as modified by the Owner for this Project.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

Liquidated Damages. Time is of the essence in this Contract. It is understood and agreed that the Owner shall have the right to retain from the amounts otherwise payable to the Construction Manager under this Agreement or recover from the Construction Manager the sum of \$500.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages. Owner and Construction Manager agree and acknowledge that (i) Owner's actual damages for the unexcused delay of Construction Manager in achieving Substantial Completion would be substantial but extremely difficult to ascertain, and (ii) such sum represents a fair and reasonable estimate of the damages Owner will incur as a result of the delayed achievement of Substantial Completion. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due to the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.

§ 6.1.7 Other:

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

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be the sole responsibility of the Construction Manager and shall be paid by the Construction Manager without reimbursement by the Owner.

Init.

§ 6.2.1 The Cost of the Work shall be charged to and payable by the Owner based on the actual costs incurred subject to the Guaranteed Maximum Price limitation provided herein. In the event the actual Cost of the Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price established by the Contract Documents, the Owner shall be entitled to eighty percent (80%) of the savings and the Construction Manager shall be entitled to twenty percent (20%) of the savings.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing.

§ 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, as modified by the Owner.

§ 6.3.2 Adjustments 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, as modified by the Owner.

§ 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 modified by the Owner, 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, as modified by the Owner, 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 The Construction Manager may request additional compensation pursuant to the General Conditions of the Contract.

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 actual costs necessarily incurred by the Construction Manager in the proper performance of the Work, subject to the Guaranteed Maximum Price limitation. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. THE OWNER SHALL BE DEEMED TO HAVE APPROVED SUCH COSTS ONLY IF THE CONSTRUCTION MANAGER HAS PROVIDED OWNER WITH A WRITTEN BREAKDOWN OF THE COSTS PRIOR TO INCURRING SUCH COSTS, AND THE APPROXIMATE DOLLAR AMOUNTS ATTRIBUTABLE THERETO, AND OWNER HAS APPROVED SUCH COSTS IN WRITING.

§ 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 minor work or to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

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

§ 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 limited to the personnel and activities listed below:

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

It is agreed, however, that the Owner reserves the right to audit the Construction Manager's accounting of the wages or salaries of the Construction Manager's supervisory and administrative personnel performing Work and stationed at a location other than the site and the portion of time spent by those personnel on 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, but only if prior written consent is given by the Owner and, if consent is given, only for that portion of their time required for the Work.

§ 7.2.4 Costs 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, 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.

§ 7.2.5 Intentionally Omitted.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

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

§ 7.4.1 Costs, including transportation and 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 but required 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, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are partly but not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 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. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval, but shall not exceed the standard rental rate paid at the place of the Project. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Reasonable costs of removal of debris from the site of the Work and its proper and legal disposal.

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

§ 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 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Fixed rates for these costs shall be set forth in the Guaranteed Maximum Price Amendment.

§ 7.6.1.1 Intentionally Omitted.

Init.

§ 7.6.1.2 Intentionally Omitted.

§ 7.6.2 Subject to the provisions of Section 3.2.9 herein, sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Owner is not exempt under Texas law.

§ 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 to the extent the fees are the obligation of the Contractor as required by the Contract Documents; except those related to defective or nonconforming Work.

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

(Paragraph deleted)

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Actual costs of document reproductions and delivery charges with no up-charge.

§ 7.6.8 Deposits for labor, material, equipment, or supplies that are lost for causes other than the Construction Manager's negligence or failure to fulfill a responsibility in the Contract Documents.

§ 7.6.9 Intentionally Omitted.

§ 7.6.10 Intentionally Omitted.

§ 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, if approved in advance and in writing by the Owner.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior written approval.

§ 7.7.2 Costs reasonably 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, as modified by the Owner.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. Notwithstanding the foregoing, the Construction Manager may not seek compensation from the Owner for costs of repairing or correcting damaged or nonconforming Work conducted pursuant to Section 3.5 (including its subparts) of the AIA Document A201-2017 applicable to the Project, Section 12.2 (including its subparts) of the AIA Document A201-2017 applicable to the Project, or any other provisions of the Contract Documents that require the Construction Manager to repair or correct damaged or nonconforming Work at the Construction Manager's expense, and does not permit the Construction Manager to seek compensation from the Owner for any "warranty" work required of the Construction Manager under the Contract Documents.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 above shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017, as modified by the Owner, 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 provisions of this Agreement.

Init.

§ 7.7.5 If the Owner's approval is required for any costs under any of the provisions of this Agreement, such approval must be given in a writing signed by the Owner.

§ 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 give written prior notification to the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails 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;
- .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;
- .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 Costs for insurance which the Owner has not required to be provided for this Project, except to the extent that the Owner has given its express written consent and prior written approval; and
- .11 Notwithstanding anything to the contrary in Sections 7.1 through 7.7, any costs that were described in any way as being prohibited or disallowed in the Owner's Request for Qualifications and Request for Proposal or any other solicitation documents for a Construction Manager, or in Construction Manager's responses and proposals to Owner's solicitation documents.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. 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 PERFORMANCE OF THE WORK; SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 All subcontracts and purchase orders for the Project shall be awarded in accordance with Chapter 2269 of the Texas Government Code in effect on the date hereof, including without limitation §§ 2269.251, 2269.255, 2269.256 and 2269.257.

(Paragraph deleted)

§ 9.1.1 The Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than minor work which may be included in the General Conditions of the Contract for Construction, as modified by the Owner. The Construction Manager may publicly advertise for and solicit either competitive bids or competitive sealed proposals for all portions of the Work.

§ 9.1.2 The Construction Manager may seek to perform portions of the Work with its own forces that are required to be publicly advertised if (a) the Construction Manager submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors, and (b) the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner.

§ 9.1.3 The Construction Manager shall receive, open and 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, Architect, or Owner. The Construction Manager shall review and evaluate all bids or proposals, and shall recommend to the Owner a list of bidders or proposers to which the Construction Manager proposes to award subcontracts for the Work or any portion of the Work.

§ 9.1.4 If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the Construction Manager incurs because of the Owner's requirement that another bid or proposal be accepted.

§ 9.1.5 The Construction Manager shall make all bids or proposals available to the Owner on request. The Construction Manager shall make all bids and proposals available for public inspection within seven days following final selection of the subcontractors.

§ 9.1.6 The Construction Manager shall furnish to Owner and Architect for the Owner's approval prior to any public advertisement or solicitation for a portion of the Work, the evaluation criteria that the Construction Manager proposes to use in recommending qualified trade contractors or subcontractors for each portion of the Work that will provide the best value for the Owner.

§ 9.1.7 The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall solicit bids or proposals.

§ 9.1.8 The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders or proposers:

- .1 the successful bidder's or proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 the successful bidder's or proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and
- .3 a notice of the sales tax exemption for the Project and the procedure for obtaining any required exemption verification or certificates.

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

§ 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 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction.

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 shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect and subject to the terms and conditions of the Contract Documents, 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.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month and the Architect's Certificate of Payment containing the Architect's recommendation regarding payment is submitted for the Owner's consideration at least 10 days prior to the next month's regular Board meeting, the Owner shall make payment of the amounts not disputed by the Owner within forty-five (45) days of the Owner's receipt of the Architect's Certificate of Payment. If an Application for Payment is received after the last day of a month and/or the Architect's Certificate of Payment is not submitted by the 10-day deadline stated above, the Certificate of Payment will be submitted for the Owner's Board of Trustees' consideration at the following month's regular Board meeting after the Certificate of Payment is received. In that event, the Owner shall make payment of the amounts not disputed by the Owner within forty-five (45) days after the Board meeting at which the Certificate of Payment is considered by the Board.

§ 11.1.3.1 It is understood and agreed that no undisputed amounts in an invoice or Application for Payment shall be considered to be overdue until the expiration of the time for payment as described in § 7.1.3 above or the forty-sixth (46th) day after the Owner has received the Architect's Certificate for Payment, whichever is later.

§ 11.1.3.2 Payments for Construction Phase Services that are overdue shall accrue interest at the rate specified in Texas Government Code § 2251.025(b).

§ 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.

§ 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 shall allocate the entire Guaranteed Maximum Price among: (1) the various portions 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.

§ 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 or Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 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 of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017, as modified by the Owner, 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 of the Work by the share of the Guaranteed Maximum Price allocated to that portion 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 Owner, in consultation with the Architect, determines to be reasonably justified; and
- .4 The Construction Manager's Fee, less retainage of five percent (5.0%), 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 or Owner has previously withheld a Certificate for Payment or Payment;
- .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 or Owner may withhold payment, or the Architect or Owner may nullify a Certificate of Payment in whole or in part;
- .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 or the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 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 (5.0%).

(Paragraphs deleted)

§ 11.1.9 Intentionally Omitted.

§ 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.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. All Subcontracts shall provide for a five percent (5.0%) retainage unless otherwise agreed to in writing by Owner. The Construction Manager shall execute subcontracts in accordance with the provisions of this Section 11.1.11.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager 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 or the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less retainage and any other amounts which Owner is authorized to withhold, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, as modified by the Owner, and to satisfy other requirements, if any, which 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;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2;
- .4 the surety has consented to final payment;
- .5 the Construction Manager has, in writing, certified to the Owner that the Project has been constructed in accordance with the construction documents prepared by the Architect and has executed and delivered to the Owner the Certification of Project Compliance form developed by the Texas Education Agency;
- .6 as-built drawings have been submitted to the Owner;
- .7 the Construction Manager has provided all warranties, instructions, training, and satisfied all requirements of the Contract Documents for completing or finishing out the Project;
- .8 the Construction Manager has submitted to the Owner an affidavit and other evidence satisfactory to the Owner that all 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 either (a) have been paid or otherwise satisfied, or (b) will be paid out of the proceeds of the final payment;
- .9 if required by the Owner, the Construction Manager has submitted to the Owner other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- .10 the Construction Manager has submitted to the Owner a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner; and
- .11 the Construction Manager has submitted to the Owner a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

§ 11.2.2 The Owner reserves the right to conduct an audit, or have an audit conducted on its behalf, of the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner or its representatives determine to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 11.2.1 have been met, the Architect will, within seven (7) days after receipt of the written notification of the result of Owner's audit,

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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 the AIA Document A201–2017, as modified by the Owner. The time periods stated in this Section supersede those stated in Article 9 of the AIA Document A201–2017, as modified by the Owner. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting. It is understood and agreed that the Architect's final Certificate of Payment will not be issued until the time permitted for the Owner to conduct an audit has expired. If the Construction Manager fails to submit information that the Owner deems is necessary for the audit to be conducted, the time for the issuance of the Architect's final Certificate of Payment shall be tolled and extended for the amount of time that the information is withheld by the Construction Manager.

§ 11.2.2.1 Intentionally Omitted.

§ 11.2.2.2 Intentionally Omitted.

§ 11.2.2.3 If the Owner's audit 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 request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017, as modified by the Owner. A request for mediation shall be made by the Construction Manager within thirty (30) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this thirty (30)-day period shall result in the substantiated amount as concluded by the Owner's audit becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the substantiated amount as determined by the Owner or the amount certified in the Architect's final Certificate for Payment, whichever is less.

§ 11.2.3 The Owner's final payment to the Construction Manager will be made within thirty-one (31) days after the date that all conditions of this Section 11.2.1 have been met and the final Certificate for Payment has been approved by the Owner's Board of Trustees, or as otherwise required by Chapter 2251 of the Texas Government Code. Retainage withheld by the Owner and payable to the Construction Manager shall be paid to the Construction Manager within thirty-one (31) days after the final payment is due.

§ 11.2.3.1 If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Construction Manager may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after final payment is made to the Construction Manager, the Construction Manager shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 11.2.4 Intentionally Omitted.

§ 11.2.5 By requesting final payment, the Construction Manager warrants that the Work has been completed in a good and workmanlike fashion, that the finished product contains no patent defects, that all time and materials liens have been waived or bonded against, and that the Construction Manager has inspected all aspects of the work, including all work done by subcontractors, and found it to be in accordance with the plans, specifications and Contract Documents.

§ 11.2.6 The Work shall not have been fully performed until all work required by the Contract Documents, including but not limited to the following, has been performed:

- .1 provision of record or as-built drawings executed or complete;
- .2 provision of executed or completed certificates of documents evidencing warranties, owner-operator manuals, maintenance manuals, or other required equipment/product documentation;
- .3 provision of all documents evidencing required testing, inspection, verification, and other engineering or consulting services required under the Contract Documents or by the manufacturer;
- .4 provision of proof satisfactory to the Owner that all requirements of the manufacturer(s) have been met such that the warranties issued by the manufacturer(s) are in force and will be given full effect; and
- .5 provision of insuring agreements and bonds covering all periods of construction and any subsequent periods required under the Contract Documents.

§ 11.2.7 The making of final payment shall not constitute a waiver of any claims by the Owner.

§ 11.2.8 Acceptance of final payment by the Construction Manager, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 11.3 Interest

Undisputed payments that are due and unpaid under the Contract shall bear interest from the date payment
(Paragraphs deleted)
of the undisputed amount is due at the rate specified in Texas Government Code § 2251.025(b).

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim 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, as modified by the Owner. Any provisions in the Contract Documents to the contrary notwithstanding, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as modified by the Owner, for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any and all Claims between the Parties to this Agreement that are not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as modified by the Owner, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not fewer than twenty-four (24) hours’ written notice to the Construction Manager for the Owner’s convenience and without cause.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in

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accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not fewer than forty-eight (48) hours' written notice to the Construction Manager for the Owner's convenience and without cause.

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

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as modified by the Owner, shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination less any amounts which the Owner is authorized to withhold, retain or setoff under the terms of the Contract or applicable law;
- .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, as calculated in accordance with Section 6.1.3 for payment upon termination less any amounts the Owner is authorized to withhold, retain or setoff; 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 and shall allow termination of the subcontract in the event the Owner or the Construction Manager terminates this Agreement or the Contract.

§ 13.1.6.1 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 for work, equipment or rentals provided prior to termination of such contracts, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 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, as modified by the Owner.

§ 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, as modified by the Owner, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017, as modified by the Owner, shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

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- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination less any amounts which the Owner is authorized to withhold, retain or setoff under the terms of the Contract or applicable law;
- .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, as calculated in accordance with Section 6.1.3 for payment upon termination less any amounts the Owner is authorized to withhold, retain or set off from the Construction Manager's Fee;
- .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, as modified by the Owner.

§ 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.

§ 13.2.3 Termination by the Owner for Convenience

See Article 14 of AIA Document A201-2017,
(Paragraphs deleted)
as modified by the Owner.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017, as modified by the Owner; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, as modified by the Owner, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201-2017, as modified by the Owner. 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 or as modified by the Owner.

§ 14.2 Governing Law and Venue

(Paragraph deleted)

§ 14.2.1 Governing Law

The Agreement, the Contract, and the Contract Documents shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents. No provision of this Agreement is a waiver of any immunity, defense, or a consent to suit.

§ 14.2.2 Venue

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

§ 14.3 Successors and Assigns

§ 14.3.1 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. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, as modified by the Owner, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an

assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The foregoing notwithstanding, the Owner shall have the right to assign this Agreement, and all of the Contract Documents to the Bond Trustee, if any, for the bond issuance used to finance the construction of the Work (or its designee) and such Trustee or its designee shall have the right to assume the position of the Owner under the Contract Documents.

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

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 14.4

(Paragraphs deleted)

Insurance and Bonds

§ 14.4.1 For all phases of the Project, the Construction Manager shall purchase and maintain insurance, shall require subcontractors to purchase and maintain insurance, and shall provide bonds as set forth and required in the General Conditions document, as amended by the Owner, pertaining to the Project and/or any supplemental conditions pertaining to the Project. The types of insurance or bond required and the limit of liability or amount of bond for each type include, but are not limited to, the following:

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage)	See liability limits in Article 11 of A201 – 2017 as amended for this Project, or other applicable conditions of the contract
Workers Compensation	See liability limits in Article 11 of A201 – 2017 as amended for this Project, or other applicable conditions of the contract
Automobile Liability	See liability limits in Article 11 of A201 – 2017 as amended for this Project, or other applicable conditions of the contract
Excess/Umbrella Liability	See liability limits in Article 11 of A201 – 2017 as amended for this Project, or other applicable conditions of the contract
Builder's Risk Insurance	See liability limits in Article 11 of A201 – 2017 as amended for this Project, or other applicable conditions of the contract (coverage required during Construction Phase)
Statutory Performance Bond	Entire Value of the Contract (proof of bond must be produced within 3 business days of execution of applicable GMP Amendment)
Statutory Payment Bond	Entire Value of the Contract (proof of bond must be produced within 3 business days of execution of applicable GMP Amendment)

Should the General Conditions document for the Project, as amended by the Owner, require additional insurance or insurance of a type not listed above, the Construction Manager shall provide the additional or different type(s) of insurance as required by the General Conditions document.

§ 14.4.2 The Construction Manager shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of the existence of workers' compensation coverage for its employees, or, at the Construction Manager's sole discretion, provide for coverage of the subcontractor's employees under the Construction Manager's workers' compensation insurance coverage. The Construction Manager shall maintain

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records of all required certificates of insurance provided by the subcontractors and shall forward copies to the Owner and the Architect.

§ 14.4.3 The Construction Manager's failure to abide by the requirements of this Section 14.3 and Article 11 of A201-2017, as modified by the Owner, including its subparts, and other insurance requirements contained in the General Conditions document pertaining to the Project, as modified by the Owner, or insurance requirements contained in the supplemental conditions pertaining to the Project shall be a material breach of the Contract.

§ 14.4.4 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

§ 14.5 Other provisions:

The following items shall not be considered Cost of the Work and are included as part of Construction Phase Fee:

- Staff Support Services not otherwise identified herein for payment
- Vehicle, Rental, Fuel and Insurance
- Cell Phone
- Two-Way Radios
- Accounting and Data Procession Fees
- AGC and Other Association Fees

§ 14.6 **MATERIALS AND VERIFICATION TESTING.** The Construction Manager will assist the Owner in selecting a separate contractor or contractors to provide construction materials inspections and testing, and verification testing services necessary for acceptance of the Project.

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

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

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

§ 14.10 **Notice.** All notices required to be given under the Contract must be in writing, and may be delivered via certified mail, return receipt requested, hand-delivery, overnight delivery, or email to the last provided email address followed by first class mail. 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 or

first class mail, 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.

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

§ 14.12 Safe Access. If the building will be used or occupied by the Owner or members of the public, the Construction Manager 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.

§ 14.13 Severability

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

§ 14.14 Pursuant to the requirements of HB 89 of the 2017 Texas Legislative Regular Session and Tex. Govt. Code § 2271.002, Construction Manager affirms that it does not boycott and will not boycott Israel during the term of this Contract.

§ 14.15 Construction Manager affirms that it is not identified on a list prepared and maintained under Tex. Govt. Code §§ 806.051, 807.051 or 2252.153.

§ 14.16 Pursuant to the requirements of SB 13 of the 2021 Texas Legislative Regular Session, Construction Manager affirms and verifies that it does not and will not boycott energy companies.

§ 14.17 Pursuant to the requirements of SB 19 of the 2021 Texas Legislative Regular Session, Construction Manager affirms and verifies that it does not and will not discriminate against firearm and ammunition industries.

§ 14.18 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Construction Manager is certifying to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Construction Manager is also representing that it will require all subcontractors to provide workers' compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to the Construction Manager. The Construction Manager will provide the certifications to Owner. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager which entitles the Owner to declare the contract void if the Construction Manager does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

§ 14.19 Execution & Signatures. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A digital, electronic, or facsimile signature may be used in place of an original signature and shall carry the same weight and effect as an original signature.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement 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, except for those constituting

part of the Contract Documents. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 This 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 the Owner.
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 Intentionally Omitted
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner
- .5

(Paragraphs deleted)

All Project Manuals for the Project, including all sections to same, whether issued or created prior to or after the execution of this Agreement

(Paragraphs deleted)

- .6 Intentionally Omitted.

(Table deleted)

- .7 Other documents, if any, listed below:

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

- .1 Owner's Request for Qualifications and Request for Proposal or other solicitation documents for a Construction Manager, together with all documents contained therein and any newspaper advertisement related to same
- .2 Construction Manager's responses and proposals to Owner's solicitation documents
- .2 Guaranteed Maximum Price Amendment, when and if signed by the parties
- .3 Drawings, Specifications, Submittals and Addenda for Project, whether issued or created prior to or after the execution of this Agreement
- .4 Conditions of the Contract (General, Supplementary and other Conditions)
- .5 Statutory Payment and Performance Bonds
- .6 Certificates of Insurance required of the Construction Manager
- .7 All documents listed or described in Section 1.1.1 of AIA Document A201-2017, as modified by the Owner
- .8 Scale/Schedule of Prevailing Wages (attached as Exhibit "1" to the AIA Document A201–2017, General Conditions of the Contract for Construction, as modified by the Owner) and incorporated herein as if fully set forth
- .9 Any modifications to this Agreement or to the Contract approved by the Parties
- .10 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract

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

**LONE OAK INDEPENDENT SCHOOL
DISTRICT**

**POGUE CONSTRUCTION CO., L.P., a TEXAS
LIMITED LIABILITY PARTNERSHIP acting by
and through BEN POGUE, L.C., a TEXAS
LIMITED LIABILITY COMPANY, GENERAL
PARTNER**

OWNER *(Signature)*

Justin Ramm, President, Board of Trustees
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Benjamin P. Pogue, Sole Member of Ben Pogue, L.C.,
a Texas Limited Liability Company
(Printed name and title)

Init.

**RESOLUTION OF THE BOARD OF TRUSTEES OF
LONE OAK INDEPENDENT SCHOOL DISTRICT
APPROVING CONTRACT WITH CONSTRUCTION MANAGER
LOISD 2021 BOND PROGRAM –
DISTRICT-WIDE ADDITIONS AND RENOVATIONS**

WHEREAS, the Lone Oak Independent School District (the “District” or “LOISD”) is undertaking the construction of certain additions and renovations as a part of the LOISD 2021 Bond Program (the “LOISD 2021 Bond Program (District-Wide Additions and Renovations)”); and

WHEREAS, the Board of Trustees (the “Board”) of LOISD has previously selected Pogue Construction Co. (“Pogue”) as the construction manager-at-risk for the LOISD 2021 Bond Program (District-Wide Additions and Renovations); and

WHEREAS, the Board of Trustees of LOISD has been presented with a draft copy of the contract with Pogue.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LONE OAK INDEPENDENT SCHOOL DISTRICT AS FOLLOWS:

1. It is found that the foregoing recitals are true and correct and are hereby adopted as findings of fact by the Board of Trustees of Lone Oak Independent School District.
2. The Contract with Pogue described in the preambles above is hereby approved subject to such changes and alterations to the provisions of the Contract as the Authorized Person determines to be advisable.
3. The Authorized Person listed below is delegated the authority to negotiate additional and/or modified terms and conditions of the Contract with Pogue (whether through the Superintendent of Schools, the Superintendent’s designee, or the LOISD legal counsel), to finalize the terms and conditions of the Contract, and is otherwise authorized to execute, acknowledge, and deliver the final version of the Contract to Pogue in the name and on behalf of the District and the Board of Trustees.
4. For the purpose of this resolution, the following person, or the person holding the following positions or offices, is the “Authorized Person” duly authorized to enter into the transaction

and to execute the Contract in the name and on behalf of the District and the LOISD Board of Trustees:

<u>Name</u>	<u>Title</u>
a. Justin Ramm	President, LOISD Board of Trustees

5. This Resolution shall take effect immediately.

PASSED and ADOPTED the 27th day of February, 2022, by the Board of Trustees of the Lone Oak Independent School District by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Justin Ramm, President, Board of Trustees

ATTEST:

Chris Moore, Secretary, Board of Trustees