Board Workshop Agenda
Lake Travis Independent School District Board of Trustees

A meeting of the Board of Trustees of Lake Travis Independent School District will be held February 19, 2025, beginning at 6:00 PM in the Educational Development Center, Live Oak Room
607 RR 620 North
Austin, TX 78734.

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 order shown on this agenda.

1. Call To Order and Quorum Determination
2. Pledge of Allegiance and Moment of Silence
3. Recognitions 4
   - A. Lake Travis High School – Texas State Thespians Convention & Festival Improv Competition 10
   - B. LT High5 Award presented by High5 – Round 3 Recipients 11
4. Public Comments/Citizen Participation
5. Presentation/Discussion Items
   - A. Campus Presentation - Lake Travis Elementary School 12
   - B. Curriculum and Instruction Update – Learning Together 2025 Conference 24
   - C. Middle of Year Universal Screener Data K-5 50
   - D. January 2025 Monthly Financial Reports - Statement of Revenues and Expenditures, Balance Sheet, Tax Statement and 2018/2023/2024 Capital Projects Report 62
   - E. Strategic Plan Update 69
   - F. Attendance Update 133
   - G. Competitive Sealed Proposal (CSP) - Reimer's Road Private Drive Project 144
   - H. 2025-2026 Preliminary Budget Update 146
   - I. Request for Proposals for AV Replacement for Hudson Bend Middle School 148
6. Consideration Items
   - A. Agreement with Travis County and Other Municipalities Regarding May 3, 2025 Joint Election 149
   - B. Election Services Agreement Between Travis County and Lake Travis Independent School District 163
   - C. 2024 - 2025 Budget Amendment to the General Operating Fund and Debt Service Fund 177
   - D. Resolution Authorizing Wage Payments for Employees Impacted by January 21, 2025 School Closure 181

E. Resolution Amending Authorized Representatives of Lake Travis Independent School District to Transmit Funds for Investment in TexPool/TexPool Prime 184

F. Resolution Regarding the Sale of Approximately 0.266 Acres of Land Located on Jingle Dr. 187

G. Architect Agreement between Lake Travis ISD and LPA, Inc. for Technology Building Addition Project 193

H. Construction Agreements between Lake Travis ISD and American Constructors for High School No. 2 Project 263

I. Construction Agreements between Lake Travis ISD and American Constructors for the Competition Gym and Fine Arts Addition Project 438

J. Construction Agreements between Lake Travis ISD and Braun & Butler Construction for Lake Travis High School Science Wing Addition Project 612

K. Agreement with JG Consulting regarding Executive Search for Superintendent of Schools 786

7. Consent Agenda
   A. Minutes of January 15, 2025 Board Meeting , January 22, 2025 and February 7, 2025 Special Called Meeting 791
8. Upcoming Meetings and Events
   A. March 26, 2025, 6:00 p.m. - Monthly Board Meeting, EDC
   B. April 2, 2025, 6:00 p.m. - Budget Workshop, EDC
   C. April 16, 2025, 6:00 p.m. - Monthly Board Meeting, EDC
9. **Closed Session in accordance with Texas Government Code 551.001 et. seq.**

Section 551.071 - For the purpose of a private consultation with the Board's attorney on any or all subjects or matters authorized by law, including private consultation with the Board's attorney regarding pending/threatened litigation and possible resolution of special education matters, and to provide legal advice regarding Level Three grievances pending before the Board.

Section 551.072 - For the purpose of discussing the purchase, exchange, lease, or value of real property.

Section 551.074 - For the purpose of discussing the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee, or to hear complaints or charges against a public officer or employee, including discussion of multiple Level Three grievance hearings.

Section 551.0821 - For the purpose of deliberation on a matter regarding a public-school student if personally identifiable information about the student will

necessarily be revealed by the deliberation, including private consultation with the Board's attorney regarding pending/threatened litigation and possible resolution of special education matters.

10. Consideration Items Arising From Closed Session
    A. Consideration of and Potential Action regarding a Level Three Grievance
    B. Consideration of and Potential Action regarding a Level Three Grievance
    C. Consideration of and Potential Action regarding a Level Three Grievance
    D. Consideration of and Potential Action regarding a Level Three Grievance
    E. Consideration of and Potential Action regarding a Level Three Grievance
    F. Consideration of and Potential Action regarding a Level Three Grievance
    G. Consideration of and Potential Action regarding a Level Three Grievance
    H. Consideration of and Potential Action regarding a Level Three Grievance
    I. Consideration of and Potential Action regarding a Level Three Grievance
    J. Consideration of and Potential Action regarding a Level Three Grievance
    K. Consideration of and Potential Action regarding a Level Three Grievance
    L. Consideration of and Potential Action regarding a Level Three Grievance
    M. Consideration of and Potential Action regarding a Level Three Grievance
    N. Consideration of and Potential Action regarding a Level Three Grievance
    O. Consideration of and Potential Action regarding Delegation of Authority for Resolution of Student Special Education Matters
11. Adjournment

LAKE TRAVIS
INDEPENDENT SCHOOL DISTRICT

February 19, 2025
School Board Meeting
Special Recognition

LAKE TRAVIS
INDEPENDENT SCHOOL DISTRICT

Lake Travis High School
2025 Texas State Thespians Convention & Festival Improv Competition







LAKE TRAVIS
INDEPENDENT SCHOOL DISTRICT

LT High5 Award presented by High5 Round 3 Recipients



Cisco Lopez - IT



Andrea Rios - BCMS



Jami Yaeger - HBMS

LAKE TRAVIS
INDEPENDENT SCHOOL DISTRICT

February 19, 2025
School Board Meeting
Special Recognition

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Lake Travis High School – Texas State Thespians Convention & Festival Improv Competition

RECOMMENDED ACTION
Special Recognition

RATIONALE
Lake Travis High School's Theatre company is thrilled to announce that its talented team clinched 3rd Place at the Texas State Thespians Convention & Festival Improv Competition in January. This competition saw the Improv team showcasing their artistic skills and quick-thinking abilities. The team navigated through six rigorous rounds of competition, demonstrating a remarkable ability to adapt and innovate under high stakes. The challenges posed to them required not only an in-depth understanding of the art but also an exceptional level of improvisation. Their success not only brings pride to Lake Travis High School but also sets a high standard of excellence for future participants.

The Improv team is comprised of the following theater students:

- **Ellie Carpenter**, junior
- **Chloe De Leon**, senior
- **Jason Fingerman**, senior
- **Garrett Grant**, junior
- **Kinsey Jacobsen**, senior
- **Kate Kingsley**, senior (captain)
- **Rachel Looper**, senior
- **Marshall McCarty**, senior

Texas Thespians, an affiliate of the Educational Theatre Association, is one of the largest chapters in the nation which promotes excellence in middle and high school theatre departments across the state. Andrew Hardaway serves as the Director of Theater Arts at Lake Travis High School.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Shannon Gill - Director of Fine Arts
Debbie Garinger – Principal, Lake Travis High School
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
February 19, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
LT High5 Award presented by High5 – Round 3 Recipients

RECOMMENDED ACTION
Special Recognition

RATIONALE
Five times a year, three district employees will be presented with the "LT High5 Award presented by High5." The award recognizes outstanding service beyond self that positively impacts fellow colleagues, students, parents, and/or the Lake Travis community.

All Lake Travis ISD employees are eligible for this award. There is no official nomination form. At any time throughout the school year, any Lake Travis ISD employee may nominate another employee for the award by simply sending an email directly to the District's Executive Director for Communications & Community Relations. Nominees are reviewed and award recipients are selected by the Superintendent's Cabinet.

The following employees are recipients of the third round of the LT High5 Award presented by High5:

- **Cisco Lopez** - Technology/Frontline Specialist, Technology & Information Systems
- **Andrea Rios** - Special Services Teacher, Bee Cave Middle School
- **Jami Yaeger** - Receptionist, Hudson Bend Middle School

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Susan Fambrough - Assistant Superintendent of Human Resources
Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS
None

MEETING DATE
February 19, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Campus Presentation–Lake Travis Elementary

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
The purpose of this presentation is to provide the Board of Trustees and the community with a snapshot of the impactful work being done by Lake Travis Elementary. This includes highlighting significant achievements by students, staff, and families that contribute to the overall success of the school community.

The expected outcome of this presentation is to strengthen the connection between the campus and the community and give the Board of Trustees the opportunity to engage in conversations with the campus principal that support the success of all stakeholders.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Stefani Vickery - Assistant Superintendent of Curriculum & Instruction
Sebastian Espinoza - Principal, Lake Travis Elementary

ATTACHMENTS
Presentation

MEETING DATE
February 19, 2025

Lake Travis Showcase

Lake Travis Elementary

February 19, 2025

Principal: Sebastian Espinoza

All About Us

- Current building opened in 2005
- 754 students; up from 737 in October
- 117 staff members
- Specialized programs: Child Development Center (CDC), PreK, Early Childhood Special Education (ECSE), Dual Language, Gifted and Talented

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LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

Campus Goal

The Mission of Lake Travis Elementary is to foster lifelong learners, by creating an inclusive, student-centered community where students engage in rigorous, meaningful learning. Through collaborative teaching and community involvement, we empower students to take ownership of their education, develop their unique identities, and achieve academic excellence. Our goal is to prepare every student with essential problem-solving skills and a strong sense of responsibility for their future success.

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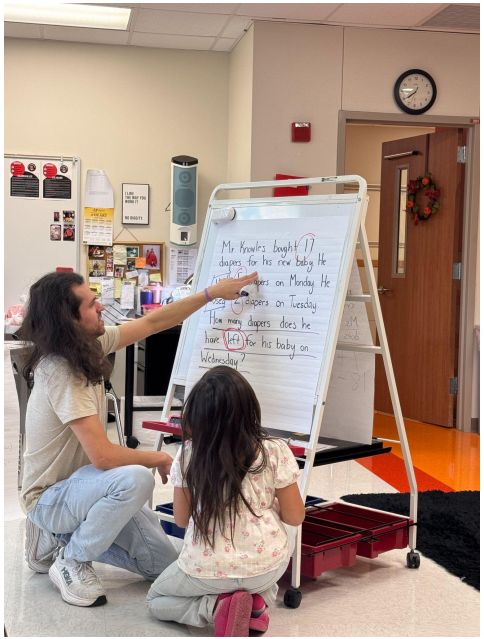
LAKE TRAVIS
INDEPENDENT SCHOOL DISTRICT

Campus Spotlight–Focus on Students

Academic Growth:

- Roughly 28% of our students are identified for specialized academic interventions
- Math and Reading Interventionists meet with students for weekly small group targeted interventions
  - Regularly track student progress and goals
  - Through careful analysis, some students have been exited from the intervention groups as they have met their goals
- The constant analysis of student data has allowed us to add more students based on their individual needs

Campus Spotlight – Focus on Students





Intervention focus

Campus Spotlight – Focus on Educators

Focus on professional development:

- Region XIII partnered with us to analyze and improve our Dual language programming
- E3 Alliance has assisted with the creation of our Instructional Playbook
- Emergent Tree has supported the administrative team on giving more teacher tools to help increase engagement and on task behaviors
- Research Based Instructional Strategies (RBIS) training for ELAR and math teachers
- Bilingual and District Instructional coaches support teachers.

LTE Priorities

LTE Playbook
PLCS and Common Planning Time

Positive School Culture
SEL and Second Step Curriculum



Dual Language Program
Coaching and Feedback



THE SQUIRE WAY

- Randomization
- Think-Pair-Share
- Exit Ticket

- SEL and Second Step Curriculum
- School Safety
- Building a School Community

- Relaunch Program
- Language of Instructional Minutes
- English Language Arts Time
- Implementing District Curriculum

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LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

Campus Spotlight–Focus on Educators



Campus Spotlight – Focus on Families

Career Day:

- Inviting families and the community in to showcase their careers
- Students will be able to see careers that they might not be aware of and exposing them to opportunities available after graduating!
- Planned for Wednesday, 2/26/25
- Currently, we have 21 presenters lined up, representing fields such as public service, business, home building, and STEM, including a subsea robotics engineer!

Campus Spotlight – Focus on Families





Questions?

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Curriculum and Instruction Update–Learning Together Conference 2025

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
This year marks the tenth anniversary of the Lake Travis ISD Learning Together Conference, a dynamic two-day professional learning event that offers LTISD educators a platform to engage in collaborative learning, explore practical strategies, build new skills, and refine teaching practices. Participants were given the opportunity to delve into a broad spectrum of educational topics and contribute to the ongoing advancement of educational excellence within the district.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Stefani Vickery - Assistant Superintendent of Curriculum and Instruction
Dr. Lyndsae Benton - Executive Director of Curriculum and Instruction
Curriculum Coordinators
Instructional Coaches

ATTACHMENTS
Presentation

MEETING DATE
February 19, 2025

LEARNING TOGETHER CONFERENCE 2025:

A Decade of Heart & Soul

February 13th & 14th, 2025

One Community. One Purpose. All HEART



Anna Catherine Alvis
C&I Coordinator
Instructional Technology



Jessica Barr
C&I Coordinator
STEM



Lyndsey Prosceno
Instructional Coach
Special Services



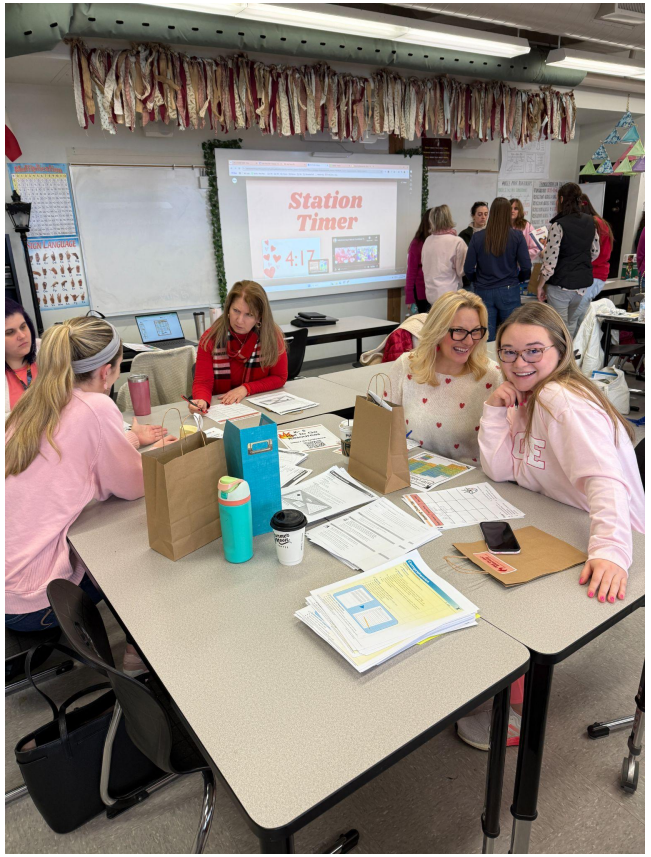
Dana Schrader
C&I Coordinator
Humanities

LEARNING TOGETHER

A Decade of Heart & Soul

LAKE TRAVIS ISD
FEBRUARY 13 & 14, 2025



















Learning Together: A Decade of Heart & Soul

Staff filled their schedule with 6 sessions of their choice.

2025 LT Conference Daily Schedule					
	Time	**Event**		**Time**	**Event**
Feb 13	8:00 - 8:45	KICK-OFF	**Feb 14**	8:00 - 8:45	Morning Meetups & Breakfast
	8:45 - 9:15	Transition & Breakfast		8:45 - 9:45	SESSION 5
	9:15 - 10:15	SESSION 1		9:45 - 10:00	Transition
	10:15 - 10:30	Transition		10:00 - 11:00	SESSION 6
	10:30 - 11:30	SESSION 2		11:00 - 12:30	LUNCH
	11:30 - 1:00	LUNCH		12:45 - 2:30	Team Time (1 hour and 45 min)
	1:15 - 2:15	SESSION 3			
	2:15 - 2:30	Transition		2:30 - 2:45	Transition
	2:30 - 3:30	SESSION 4		2:45 - 3:30	CLOSING

Learning Together: A Decade of Heart & Soul

Over the course of two days, instructional staff gathered to:

- explore a diverse range of topics
- discover new technologies, practical strategies, and wellness approaches to enrich their teaching
- engage in collaborative efforts, sharing insights to enhance their important work
- connect with colleagues, strengthening our educational community

217 Sessions

900+ Attendees

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11 Guest Presenters

165 LTISD Staff Presenters

104 Team Time PLCs

LT Conference session sign ups facilitated through Sched:

- Engaging Minds: Hands-On Learning in Science
  Lindsy Trapani • Amy Puga
- Building Strong Foundations: Effective Strategies with STEMScopes Math for Grades 3-5
  Noelle McDaniel • Mary Beth Balzer
- Elevating Student Voices: The Impact of Student-Led IEPs
  Clare Birdsall • Lyndsey Prosceno
- PE Games & More...
  Debbie Dolmanet • Cari Cadorette
- McGraw Hill - CHEMISTRY
  Renee McCown • Will Davis
- Support your Emergent Bilingual Students Every Day!
  Alex Lomeo
- Differentiation in the Secondary Classroom
  Ryan O'Donoghue
- Google Classroom Campus Leaders
  Anna Catherine Alvis • Lisa Johnson
- Team Dynamics and Making the Most of your PLCs!
  Lori Foster • Alex Stanley • Laura Annabelli • Natalie Zanot • Katelin Hunt • Suzanne Pankonien
- Creating Paraprofessional Buy In: A How To for Cultivating a Positive Classroom
  Erin Russo
- Formatting Google Classroom
  Kim Waugh • Catherine Halvorson
- HOT TO GO! Literacy: Resources to Ignite your Instruction
  Wendy Gorfain • Diana Jackson
- Garden of Growth: Cultivating Teacher Wellness
  Annie Powers
- From FIE to IEP! Using Evaluation Scores to Inform IEPs
  Ashley Allison • Lyndsey Prosceno
- Guided Grouping- Cross Curricular (Humanities & STEM)
  Souvany Jennings • Kennedy King • Karla Trevino • Blair DaGian
- ¿Qué Dijiste? Teaching Tough Stuff in Plain Language
  Carolyn Ehmry
- Transforming Essential Standards into Action: A SMART Goal Workshop for MTSS
  Bridgette DeLong
- How to Talk to Trees About their Apples: Crucial Conversations with Parents
  Keegan Luedecke • Lorraine LeBlanc
- Demystify HMH: Uncovering Hidden Gems 3-5
  Wendy Gorfain

Special Education

Session Topics Included:

- Student-Led IEP Meetings
- Collaborative Classrooms
- Using Assessments to Build Student Plans
- Data Digs
- Cultivating Positive Classrooms

"I've been to 6 LT conferences now, and each year, there is alway some feedback about these training days not having enough relevant course options for special education and paraprofessionals. **I felt that this feedback was really heard, because LT Conference 2025 had a wider variety of these types of sessions than I've seen before** . I'm impressed that this action was taken and hope to see this trajectory keep going to further grow and support the incredible special education staff here in LTISD!"

Elementary Teacher

New This Year: Paraprofessional Institute!

- 2-Day Training
- Goal: to help paraprofessionals gain their Educational Aide State Certification
- Led by Special Education Instructional Coach and Elementary Instructional Coach trained through Region 13

13

Paraprofessionals obtained their certification!



Learning Together: A Decade of Heart & Soul



Board of Trustees President, Erin Archer, welcomes LTISD staff to the 10th annual Learning Together conference at the LTHS PAC!



Teacher Life

Family FEUD

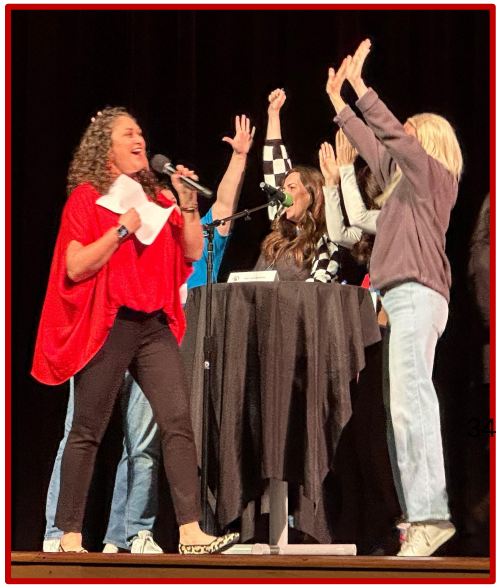
ROUND 1

What's the one thing students are most likely to forget to bring to class?

Pen/Pencil	35	4	
Homework	35	5	
Chromebook	35	6	

15









STAFF PRESENTERS













STAFF PRESENTERS

"This was EXTREMELY enlightening and going to do everything I can to accommodate my kiddos in my classroom."

ELEM Teacher

"Very helpful sessions and lot of information and tips how to handle with students."

ELEM Teacher

"This was sooooo good! I don't enjoy teaching writing, but you've given me great ideas. Thank you!"

MS Teacher

I absolutely loved this session. It was so helpful, engaging, and fun. I will definitely use this tool in my language arts classroom.

MS Teacher

"This session was awesome! Lots of good tips about how to reach the students that don't understand."

HS Teacher

"Great activities and super fun!!!"

MS Teacher

"Lots of helpful information!! I learned a few new tricks for using Google Classroom best."

HS Teacher

"PLCs improve student outcomes!"

ELEM Teacher

"I love this technique! Makes it easier on the students AND me :)))"

HS Teacher

GUEST PRESENTERS

- Magic School AI
- Canva
- TEKS Resource System (Region 13 ESC)
  (K-12, all subjects)
- Professor of Literacy from UNC
- Seidlitz Education
- Alliance Work Partners
- McGraw Hill Texas Science

  (Middle School Science & Chemistry)

- E3 Alliance
  (Middle / High School Math)





GUEST PRESENTERS

"The Magic School session was my favorite. Being able to learn more about the program from someone that works with it was very helpful. I learned how to make student rooms that will benefit their learning."

ELEM Teacher

"In the [McGraw Hill] session I was able to take away some powerful information on the textbook assessments, including the chapter and lesson resources."

MS Teacher

"This [Canva session] was so important to me. I've had such trouble getting started and I feel like my eyes were open. We found thousands of resources that will help our first graders beginning next week! BOOM. Please bring these great presenters back. I want more!!!"

ELEM Teacher

"LOVE the standards outlined for each unit!!!" [TEKS Resource System]

ELEM Teacher



TEAM TIME - DISTRICT PLC

AGENDA

1 Define & Select Essential Standards
(12:45 - 1:05)

Review our **common definition** and **commitment to** the Essential Standards, then select **4** to **5** Essential Standards for the **2025-2026 school year.**

2 LTC Agreements
(1:05 - 1:20)

Review **tightly held agreements** around LTCs and provide feedback on **loosely held agreements** and other **considerations** for the **2025-26 school year.**

3 Vertical/Cross-Curricular Time
(1:30 - 2:30)

Engage in a vertical collaborative conversation around **common areas of struggle and cross curricular connections**

104 Teams Met Across the District Including:

Counselors
Dyslexia
Fine Arts
Special Areas
Language Arts & Reading
Languages other than English
Mathematics
Nurses
Physical Education
Science
Social Studies
Special Services
Special Education
Career and Technical Education

TEAM TIME - COLLABORATION

"Teamwork is essential for having a successful year for both the students as well as the teachers."

HS Teacher

"Always good to collaborate with other schools!"

MS Teacher

"It was AMAZING for us ALL to be together.....All grade level dyslexia teachers rarely happens."

ELEM Literacy Specialist

"Great conversations across schools about essentials and aligning our ELAR standards."

ELEM Teacher

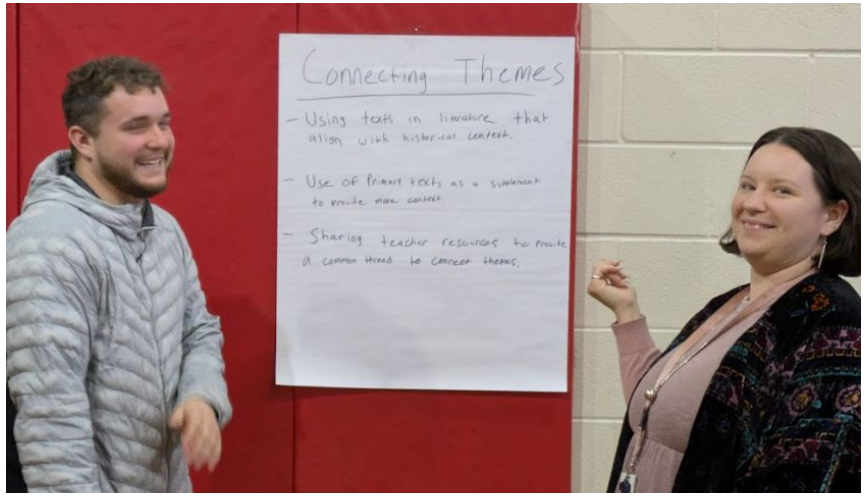
"I was happy to have the chance to talk to other English teachers from other teams, since I really only get to see them at lunches. Always learn so much from them!"

HS Teacher

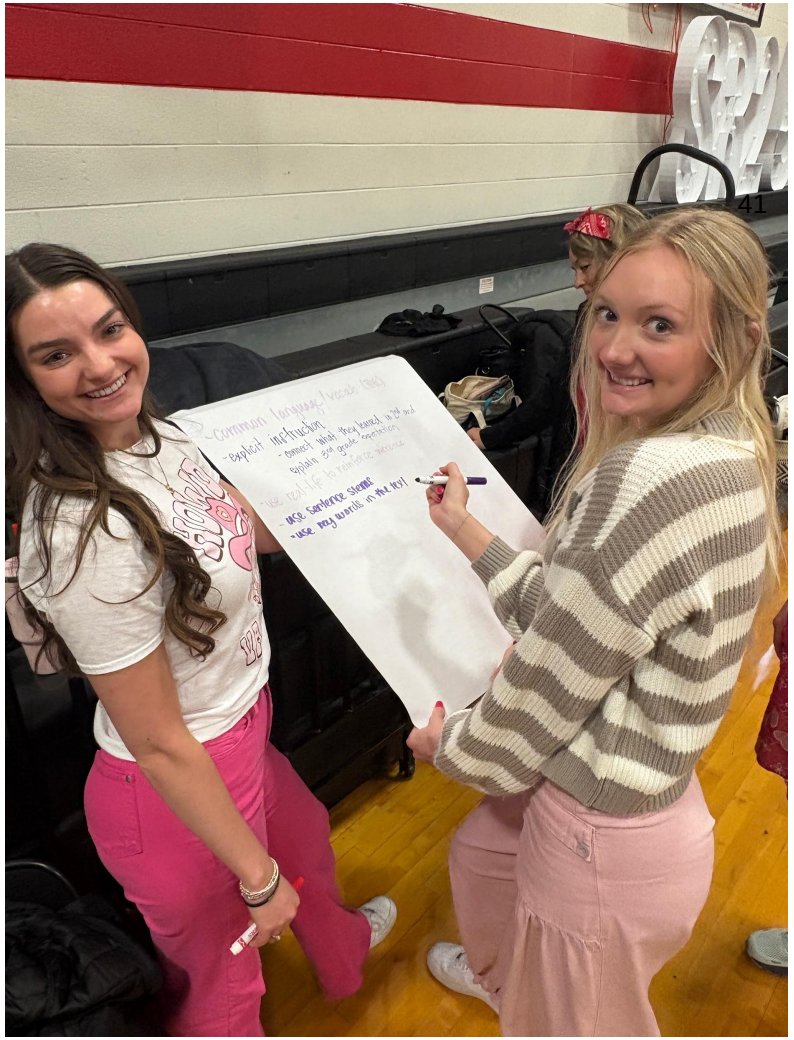
"Nice to see that we still agree on the essential standards as we picked the biggest foundational skills. I think that adding a writing TEK will help make sure we are applying all of the writing tools the district is starting to push."

ELEM Teacher

TEAM TIME - GALLERY WALK











CLOSING SESSION









Thank you to LTEF & our local sponsors!

Learning Together: A Decade of Heart & Soul

"What aspects of the LT Conference do you appreciate or enjoy the most?"

"The variety of topics to delve into."

"The camaraderie and collaboration."

"Really great content specific sessions from teachers who obviously love and excel at what they do."









Learning Together: A Decade of Heart & Soul

"This year the LT conference had classes that not only pertained to what I teach but were amazing and so inspiring!"

ELEM Teacher

"I enjoy the opportunity to reconnect with colleagues from other campuses."

ELEM Teacher





"The sessions were so well thought out and well presented by teachers and principals. I was so impressed and learned so much I will take back to the classroom right away."

ELEM Teacher





Learning Together - Campus Day

Monday, February 17th:

After two days of learning together with educators across the district, LTISD staff gathered on their campus to engage in continued conversations around:

- campus-led data dig
- cultivating campus culture
- turning learning into action

Learning Together - Future Planning

As we plan for the future of the LT Conference, we're taking to heart feedback shared by LTISD staff:

- flow of traffic after opening session
- more time to dive deeper with their district PLCs
- continuing to enrich training opportunities for non-teaching staff

THANK YOU!

"I always love learning and collaborating with other teachers. It's a great way to connect with teachers from other campuses and to see the cool things they are doing in their classrooms. I always leave the LT conference with something I want to implement in my classroom."

Elementary Teacher

Collaboration & Alignment

Practical Skills & Tools

Balanced Approach

Diverse Professional Development


LEARNING TOGETHER
A Decade of Heart & Soul
LAKE TRAVIS ISD
FEBRUARY 13 & 14, 2025

Questions?

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Middle of the Year Universal Screener Data K-5

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
LTISD administers middle of the year universal screeners to every K-5 student in reading and math. NWEA MAP Growth (Measures of Academic Progress) data for grades K-5 math and 3-5 reading, and Grades K-2 mCLASS TX Edition data for reading will be shared.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Stefani Vickery - Assistant Superintendent of Curriculum & Instruction
Dr. Lyndsae Benton - Executive Director of Curriculum & Instruction
Kathy Burbank - Director of Accountability & Achievement

ATTACHMENTS
None

MEETING DATE
February 19, 2025

Middle of Year Universal Screener Data

February 19, 2025

Universal Screeners

Purpose:

Provides the data educators need to predict gaps in learning in individual students, classrooms, and grade levels. Teachers can provide extra practice and additional, intentional instruction right away, when the learning gaps are still small, to prevent larger learning gaps later.

In LTISD we administer NWEA MAP Growth & Amplify mCLASS.

map GROWTH

NWEA™ (Northwest Evaluation Association) - Measures of Academic Progress (MAP®)

- Universal Screener designed to support growth
- Aligned to the Texas Essential Knowledge and Skills (TEKS)
- Given 3 times a year
  - BOY - September 3-13
  - MOY - January 13-24*
  - EOY – April 28-May 9
- Available in English and Spanish for grades K-5
- Used as one indicator for progress monitoring for MTSS and Accelerated Instruction
- One indicator as a projection of performance on STAAR
- Administered to grades K-5 in Math and 3-5 in Reading

Math Winter Norm by Grade

District Profile

Achievement by Grade

Lake Travis ISD | Math K-12

Grade ↑	Achievement Winter 2024-2025 Median and Distribution	Average RIT	Number of Students
K	82nd — 5% | 7% | 12% | 25% | 51%	160	671
Grade 1	70th — 8% | 12% | 19% | 28% | 33%	177	683
Grade 2	70th — 7% | 10% | 17% | 32% | 34%	191	788
Grade 3	69th — 7% | 8% | 19% | 36% | 30%	202	796
Grade 4	72nd — 7% | 13% | 17% | 23% | 40%	213	790
Grade 5	70th — 9% | 11% | 18% | 28% | 34%	222	826

Sort by: -- select an option --

Percentiles Key: 1st - 20th | 21st - 40th | 41st - 60th | 61st - 80th | >80th

Rostered Winter 2024-2025

Tested Winter 2024-2025

Reading Winter Norm by Grade

District Profile

Achievement by Grade

Lake Travis ISD | Reading

Grade ↑	Achievement Winter 2024-2025 Median and Distribution	Average RIT	Number of Students
Grade 3	71st — 9% | 10% | 19% | 27% | 35%	201	780
Grade 4	72nd — 7% | 9% | 18% | 32% | 34%	210	788
Grade 5	71st — 8% | 11% | 17% | 29% | 35%	216	817

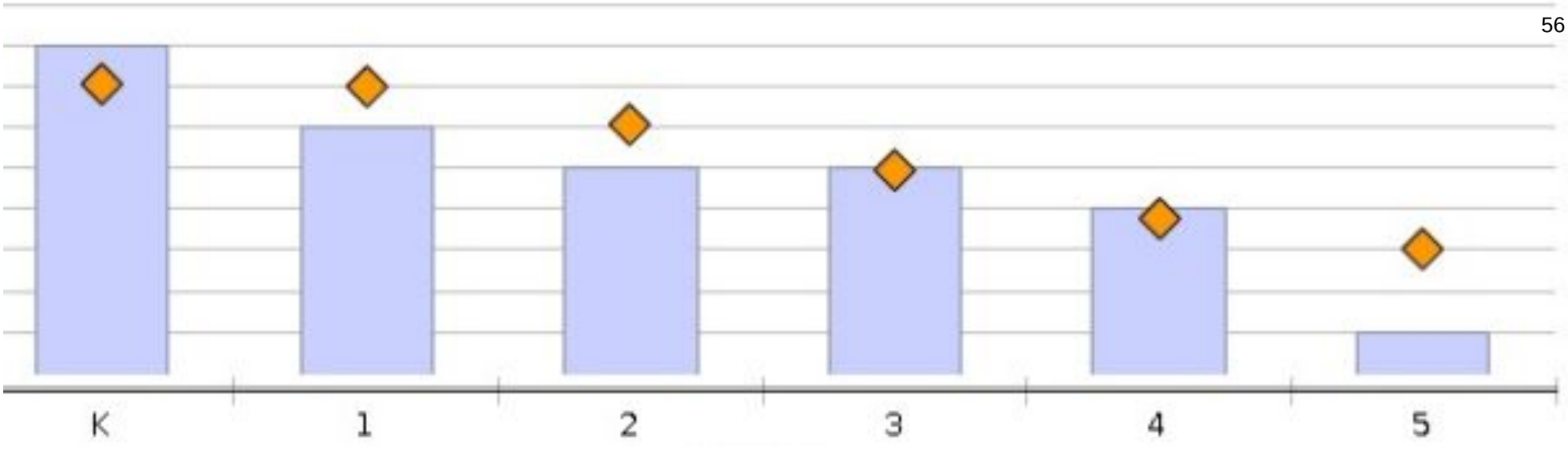
Sort by: -- select an option --

Percentiles Key: 1st - 20th | 21st - 40th | 41st - 60th | 61st - 80th | >80th

Rostered Winter 2024-2025

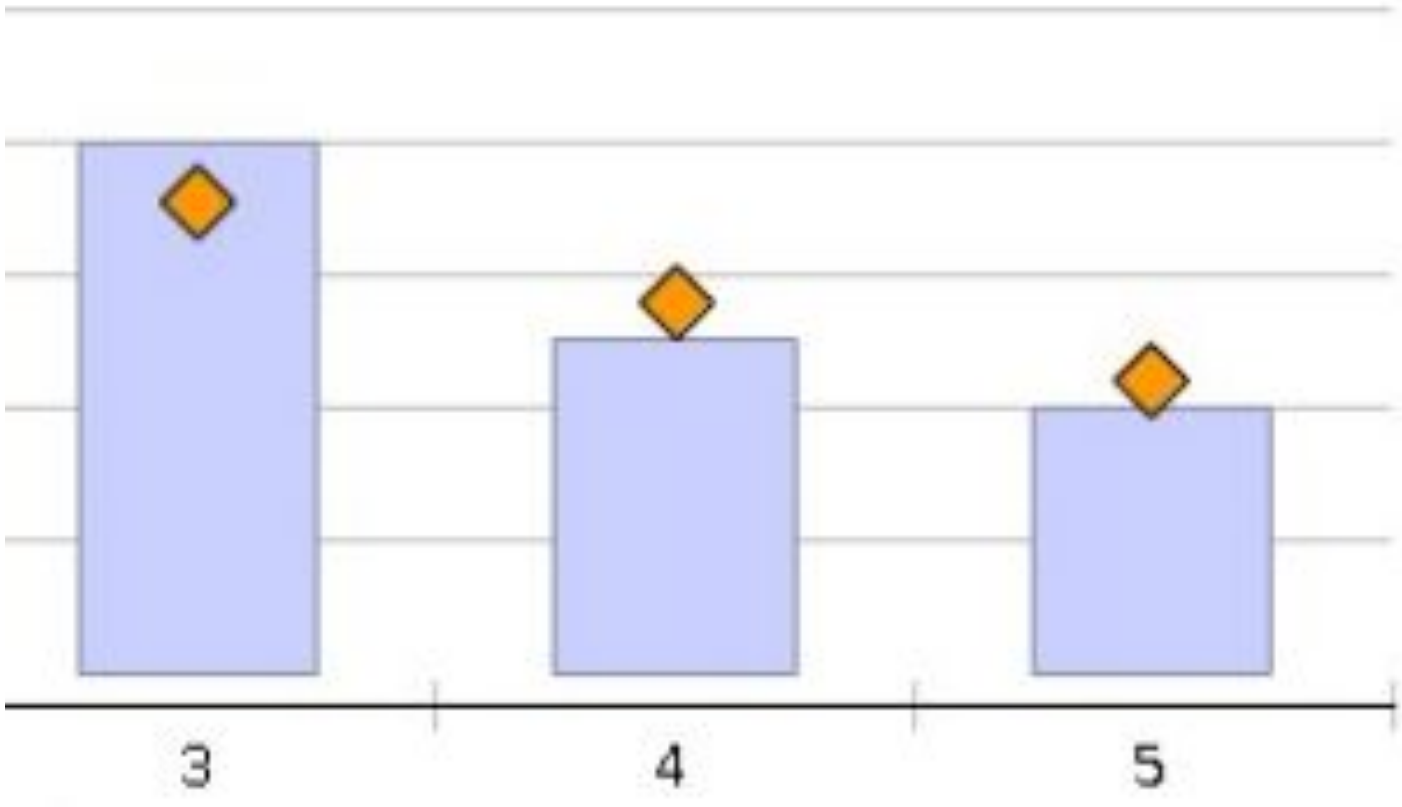
Tested Winter 2024-2025

MAP Growth Math



Bar is the observed Growth.
Diamond is the Grade-Level Norms Projected Growth

MAP Growth Reading



Bar is the observed Growth.
Diamond is the Grade-Level Norms Projected Growth

MAP Growth
Prediction on STAAR

Math	Not Pass	Pass
3rd Grade	11%	89%
4th Grade	16%	84%
5th Grade	10%	90%

Reading	Not Pass	Pass
3rd Grade	9%	91%
4th Grade	10%	90%
5th Grade	7%	93%

Prediction of Performance on STAAR as of January 2025

mCLASS® TX Edition

- Universal Screener for K-2 Reading
- Amplify
- DIBELS ® (Dynamic Indicators of Basic Early Literacy Skills) University of Oregon
  - Letter Naming Fluency
  - Phonemic Segmentation Fluency
  - Nonsense Word Fluency
  - Word Reading Fluency
  - Oral Reading Fluency
  - Maze - 2nd grade
  - Composite Score
- Required PEIMS Submission - Early Reading Inventory (ERI)
- Required PEIMS Submission - Early Childhood Data System (ECDS)
- Required PEIMS Submission - Dyslexia Screener

* BOY= Sept 3-13, MOY= Jan 13-248, EOY= Apr 28-May 9

mCLASS Reading K, 1st & 2nd

Comparing Measures: DIBELS 8th Edition

View	Population	Time	Measure
Segment Results by: District Grade Divider: On	Show Students Enrolled: Now Grade: 3 Grades District: Lake Travis ISD	School Year: 2024-2025 Period: All Periods	Measure: Composite Score Level Filter: All Levels

Lake Travis ISD — Current as of 02/08/2025

↳ Lake Travis ISD

↳ Grade K

Measures	20%	40%	60%	80%	Total Students
Composite Score	24-25 BOY: 103(16%)	123(19%)	152(24%)	259(41%)	637
	24-25 MOY: 98(15%)	75(12%)	180(28%)	287(45%)	640

↳ Grade 1

Measures	20%	40%	60%	80%	Total Students
Composite Score	24-25 BOY: 106(16%)	89(14%)	230(35%)	226(35%)	651
	24-25 MOY: 100(15%)	91(14%)	227(36%)	229(35%)	647

↳ Grade 2

Measures	20%	40%	60%	80%	Total Students
Composite Score	24-25 BOY: 98(13%)	76(10%)	237(31%)	344(46%)	755
	24-25 MOY: 95(13%)	74(10%)	212(28%)	374(49%)	755

Questions?



AGENDA ITEM ACTION SHEET

AGENDA ITEM
January 2025 Monthly Financial Reports-Statement of Revenues and Expenditures, Balance Sheet, Tax Statement and 2018/2023/2024 Capital Projects Reports

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
To provide a financial update to the Board and community regarding the financial position of the school district.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Brad Goerke – Director of Finance

ATTACHMENTS
1. Statement of Revenues and Expenditures-January 2025
2. Balance Sheet- January 2025
3. Tax Statement- January 2025
4. 2018 Capital Projects Report- January 2025
5. 2023 Capital Projects Report- January 2025
6. 2024 Capital Projects Report- January 2025

MEETING DATE
February 19, 2025

Lake Travis ISD
STATEMENT OF REVENUE AND EXPENDITURES
GENERAL FUND

1/31/2025

		Current Year				Prior Year	
Revenues		**Budget**	**Actual**	**Balance**	**Percent of Budget**	**Cumulative Actual**	**Percent of Actual**
5711	Current Year Tax Revenue	$ 139,500,000	$ 125,598,255	$ 13,901,745	90.03%	$ 129,610,575	95.22%
5700	Other Local Revenues	7,650,000	1,777,582	5,872,418	23.24%	2,019,422	39.21%
5800	State Program Revenue	14,326,764	5,812,959	8,513,805	40.57%	4,904,288	41.35%
5900	Federal Revenue	158,500	4,411	154,089	2.78%	54,732	44.01%
	Total Revenue	**$ 161,635,264**	**$ 133,193,208**	**$ 28,442,056**	**82.40%**	**$ 136,589,016**	**89.13%**
Expenditures							
11	Instruction	$ 67,561,000	$ 31,789,962	$ 35,771,038	47.05%	$ 31,657,118	46.72%
12	Instructional Resources	1,071,983	493,526	578,457	46.04%	467,700	45.18%
13	Staff Development	1,400,016	559,544	840,472	39.97%	538,316	49.69%
21	Instructional Administration	2,361,963	1,053,645	1,308,318	44.61%	1,020,161	40.15%
23	School Administration	5,828,584	2,598,563	3,230,021	44.58%	2,508,747	43.34%
31	Guidance & Counseling	5,484,061	2,051,563	3,432,498	37.41%	2,358,658	43.61%
32	Social Work Services	475,689	225,464	250,225	47.40%	117,457	38.01%
33	Health Services	1,087,609	512,251	575,358	47.10%	466,974	49.78%
34	Transportation	4,846,547	2,567,010	2,279,537	52.97%	2,554,193	45.50%
35	Food Service	122,601	51,085	71,516	41.67%	51,084	21.00%
36	Co-Curricular Account	2,745,259	1,272,585	1,472,674	46.36%	1,220,538	45.07%
41	General Administration	4,325,194	2,030,575	2,294,619	46.95%	1,849,649	39.09%
51	Plant & Maint. Operation	12,678,467	6,133,022	6,545,445	48.37%	6,041,333	47.96%
52	Security	1,696,927	702,159	994,768	41.38%	633,433	38.68%
53	Non-Inst. Data Processing	3,136,783	1,315,488	1,821,295	41.94%	1,311,015	41.04%
61	Community Services	528,009	238,067	289,942	45.09%	210,937	43.85%
71	Debt Service	275,000	-	275,000	0.00%	-	0.00%
81	Facilities/Construction	40,867	17,030	23,837	41.67%	-	0.00%
91	State Transfers	50,986,945	-	50,986,945	0.00%	-	0.00%
92	Incremental Cost WADA	-	-	-	0.00%	-	0.00%
93	SPED TRF-Regular Day	66,760	-	66,760	0.00%	-	0.00%
95	JJAEP Transfer Payments	15,000	-	15,000	0.00%	-	0.00%
99	Travis County Appraisal	1,050,000	512,549	537,451	48.81%	495,262	49.25%
	Total Expenditures	**$ 167,785,264**	**$ 54,124,087**	**$ 113,661,177**	**32.26%**	**$ 53,502,576**	**33.35%**
Other Resources and (Uses)							
7990	Other Resources	150,000	-	150,000		1,159,998	50.68%
8990	Other Uses	-	-	-		-	
8911	Transfers-Out	-	-	-		-	
	Total Resources & Uses	**$ 150,000**	**$ -**	**$ 150,000**		**$ 1,159,998**	**50.68%**

Fund Balance

1200	Excess (Deficiency) Of Revenues Over Expenditures	$ (6,000,000)	$ 79,069,121
3000	Beginning Fund Balance 9/1	$ 41,139,503	
3000	Ending Fund Balance 8/31	**$ 35,139,503**	
3590	Committed Fund Balance	**$ 666,607**	
3600	Unassigned Fund Balance	**$ 34,472,896**	

Lake Travis ISD
COMBINED INTERIM BALANCE SHEET - ALL FUND TYPES
AS OF: January 31, 2025

		General Fund	Special Revenue Funds	Debt Service Fund	Capital Projects Fund	Internal Svc., Trust & Agency Funds	Total Funds
Assets							
Current Assets:							
1101	Cash	$ 215,688	$ 2,922,887	$ 7,238,635	$ 556,955	$ 5,692,769	$ 16,626,934
1103	Temporary Investments	130,663,609	-	61,929,580	288,802,063	208,093	481,603,345
	Total Cash and Investments	**$ 130,879,296**	**$ 2,922,887**	**$ 69,168,215**	**$ 289,359,018**	**$ 5,900,862**	**$ 498,230,279**
Receivables:							
1210	Property Taxes-Current	$ 15,316,669	$ -	$ 6,796,110	$ -	$ -	$ 22,112,779
1220	Property Taxes-Delinquent	3,206,847	-	1,406,700	-	-	4,613,547
1230	Allowance-Uncollected Taxes	(1,072,058)	-	(392,241)	-	-	(1,464,299)
1240	Due From Federal Agencies	-	522,197	-	-	-	522,197
1250	Sundry Receivables	13,115	2,581	-	-	-	15,696
1260	Due From Funds	1,242,327	-	-	-	-	1,242,327
1280	Due From Other Funds Warehouse Items	-	-	-	-	(208,135)	(208,135)
1290	Other Receivables	659,302	-	-	-	-	659,302
1300	Inventories, At Cost	46,423	152,699	-	-	-	199,122
	Total Receivables	**$ 19,412,624**	**$ 677,478**	**$ 7,810,569**	**$ -**	**$ (208,135)**	**$ 27,692,536**
1400	Other Current Assets	-	-	-	-	444,059	444,059
	Total Assets	**$ 150,291,921**	**$ 3,600,365**	**$ 76,978,784**	**$ 289,359,018**	**$ 6,136,786**	**$ 526,366,874**
Resources							
5010	Estimated Revenue	$ 161,785,264	$ 9,960,770	$ 67,200,000	$ 444,494,997	$ 17,713,620	$ 701,154,651
5030	Less: Realized Revenue	133,193,208	5,434,706	58,442,583	5,799,821	4,713,268	207,583,585
5000	Revenues to be Received	28,592,056	4,526,064	8,757,417	438,695,176	13,000,353	493,571,066
	Total Assets & Resources	**$ 178,883,977**	**$ 8,126,429**	**$ 85,736,201**	**$ 728,054,195**	**$ 19,137,139**	**$ 1,019,937,940**
Liabilities							
Current Liabilities:							
2110	Accounts Payable	$ 8,340	$ 1,495	$ -	$ 2,875	$ 1,323,414	$ 1,336,125
2160	Accrued Wages Payable	12,020,913	646,264	-	70,562	257,448	12,995,187
2170	Due To Other Funds	(35,312)	(1,567)	-	(171,829)	1,242,900	1,034,192
2180	Due To Other Govt's	1,014	-	-	-	-	1,014
2190	Due To Student Groups	-	-	-	-	-	-
2150	Payroll Deduct & Withhold	-	-	-	-	375,570	375,570
	Total Current Payables	**$ 11,994,954**	**$ 646,192**	**$ -**	**$ (98,392)**	**$ 3,199,332**	**$ 15,742,087**
2210	Accrued Expenses	-	-		382,412	746,786	1,129,198
2300	Deferred Revenue	-	405,368	-	-	-	405,368
2400	Payable From Restricted Assets	-	-	-	-	-	-
2600	Deferred Inflows	18,088,342	-	7,802,419	-	-	25,890,761
	Total Liabilities	**$ 30,083,297**	**$ 1,051,560**	**$ 7,802,419**	**$ 284,021**	**$ 3,946,118**	**$ 43,167,414**
Fund Equity							
6010	Appropriations	$ 167,785,264	$ 10,445,273	$ 65,730,000	$ 728,111,179	$ 17,712,791	$ 989,784,507
6050	Less: Expenditures	(54,124,087)	(4,795,898)	(8,400)	(16,134,129)	(5,834,334)	(80,896,848)
6030	Encumbrances	-	-	-	-	-	-
	Available Appropriations	**$ 113,661,177**	**$ 5,649,375**	**$ 65,721,600**	**$ 711,977,050**	**$ 11,878,457**	**$ 908,887,659**
4310	Reserve For Encumbrances	-	-	-	-	-	-
3600	Unassigned Fund Balance	34,472,896	1,425,495	12,212,182	15,793,124	3,312,563	67,216,260
3590	Committed Fund Balance - Accr. Leave	666,607	-	-	-	-	666,607
	Total Liability & Fund Equity	**$ 178,883,977**	**$ 8,126,429**	**$ 85,736,201**	**$ 728,054,195**	**$ 19,137,139**	**$ 1,019,937,940**

SUMMARY OF TAX COLLECTIONS
AS OF JANUARY 2025

2024-25 Original Tax Levy		$ 204,465,008.78
Delinquent Taxes as of 8/31/2024		5,729,201.17
Total Receivables for 2024-25		$ 210,194,209.95
Current Year Adjustments		(1,025,172.83)
Prior Year Adjustments		(1,091,437.25)
Adjusted Receivables		$ 208,077,599.87
Total Net Collections To Date		(181,623,497.07)
Outstanding Receivables as of	1/31/2025	$ 26,454,102.80

SUMMARY OF BUDGETED COLLECTIONS	BUDGETED	NET COLLECTED	BUDGETED DIFFERENCE	% OF BUDGET COLLECTED
Maintenance - Current Tax	$ 139,500,000.00	$ 125,598,254.94	$ 13,901,745.06	90.03%
Maintenance - Prior Year Tax	200,000.00	16,833.28	183,166.72	0.00%
Maintenance - Penalties & Interest	850,000.00	189,192.61	660,807.39	22.26%
Sub-total	$ 140,550,000.00	$ 125,804,280.83	$ 14,745,719.17	89.51%
Debt Service - Current Tax	$ 63,000,000.00	$ 55,728,801.64	$ 7,271,198.36	88.46%
Debt Service - Prior Year Tax	0.00	7,384.04	(7,384.04)	0.00%
Debt Service - Penalties & Interest	300,000.00	83,030.56	216,969.44	27.68%
Sub-total	$ 63,300,000.00	$ 55,819,216.24	$ 7,480,783.76	88.18%
Total Collections	$ 203,850,000.00	$ 181,623,497.07	$ 22,226,502.93	89.10%

Tax Collection Comparison with 2024-25: Adjusted Tax Roll	2024-25	2023-24	2022-23
Percent of Current Year Taxes Collected	89.13%	88.75%	84.45%
Percent of Total Taxes Collected	89.14%	88.77%	84.20%
Percent of Total Taxes and P & I Collected	89.28%	88.87%	84.30%

Tax Collection Comparison with 2024-25: Original Tax Roll			
Percent of Current Year Taxes Collected	88.68%	88.42%	83.55%
Percent of Total Taxes Collected	88.70%	88.44%	83.29%
Percent of Total Taxes and P & I Collected	88.83%	88.54%	83.40%

Lake Travis ISD
2018 Bond Program Summary
January 31, 2025

	Resources	Original Budget	Amended Budget	Total Resources	Balance
1	Bond Proceeds	253,000,000.00	236,305,111.00	236,305,111.42	(0.42)
2	Interest Revenue	0.00	5,389,663.00	5,388,653.47	1,009.53
3	Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4	Bond Premiums	0.00	18,631,178.00	18,631,178.35	(0.35)
	Total Resources	**253,000,000.00**	**260,325,952.00**	**260,324,943.24**	**1,008.76**

	Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10	Elementary School #7	31,511,000.00	34,600,445.00	34,600,444.21	0.79
20	Elementary School #8	3,979,000.00	7,594,145.00	7,594,144.33	0.67
30	Secondary School #2	13,802,000.00	7,225,995.00	7,225,994.01	0.99
40	Middle School #3	75,980,710.00	77,314,012.00	77,314,011.66	0.34
50	FCA Projects	36,610,132.00	60,355,350.00	60,019,745.99	335,604.01
60/70	Small Renovation Improvements	16,927,133.00	11,828,948.00	11,828,947.58	0.42
	Construction/Renovation	**178,809,975.00**	**198,918,895.00**	**198,583,287.78**	**335,607.22**
81	Instructional Materials & Equipment	5,707,000.00	4,169,372.00	4,169,371.01	0.99
82	Technology	29,901,700.00	25,608,118.00	25,608,117.83	0.17
83	Copy Machines	750,000.00	1,093,944.00	1,093,943.97	0.03
84	Maintenance	600,000.00	793,831.00	793,830.93	0.07
85	Food & Nutrition Services	3,950,789.00	1,948,974.00	1,948,973.36	0.64
86	Transportation	13,300,000.00	8,939,816.00	8,939,815.11	0.89
87	District Furniture & Equipment	6,000,000.00	6,959,895.00	6,959,894.41	0.59
88	Police	0.00	590,596.00	590,595.95	0.05
90	Land	1,270,000.00	576,465.00	576,464.50	0.50
91	Bond Closing	2,000,000.00	1,918,024.00	1,918,023.77	0.23
94	Contingency	7,510,536.00	4,400,116.00	4,400,116.00	0.00
95	Program Administration	3,200,000.00	3,945,328.00	3,945,327.77	0.23
97	LTMS Wastewater Expansion	0.00	462,578.00	423,356.98	39,221.02
	Other Programs	**74,190,025.00**	**61,407,057.00**	**61,367,831.59**	**39,225.41**
	Total 2018 Bond Program	**253,000,000.00**	**260,325,952.00**	**259,951,119.37**	**374,832.63**

Lake Travis ISD
2023 Bond Program
January 31, 2025

	Resources	Original Budget	Amended Budget	Total Resources	Balance
1	Bond Proceeds -Prop A	548,410,330.00	548,410,330.00	246,715,051.13	301,695,278.87
1	Bond Proceeds -Prop B	60,790,110.00	60,790,110.00	40,639,386.23	20,150,723.77
2	Interest Revenue - Prop A	0.00	28,134,365.00	23,588,313.71	4,546,051.29
2	Interest Revenue - Prop B	0.00	4,580,013.00	3,839,958.04	740,054.96
3	Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4	Bond Premiums	0.00	14,705,427.00	14,705,427.00	0.00
	Total Resources	**609,200,440.00**	**656,620,245.00**	**329,488,136.11**	**327,132,108.89**

	Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10	Elementary School #8	50,917,526.00	50,917,526.00	172,706.74	50,744,819.26
20	Elementary School #9	55,517,521.00	55,517,521.00	5,386,769.06	50,130,751.94
30	Secondary School #2	179,990,620.00	179,990,621.00	6,875,775.26	173,114,845.74
40	Campus/District Facilities Projects	177,393,335.00	173,718,436.00	12,472,861.58	161,245,574.42
50	FCA Projects	36,312,528.00	36,260,427.00	4,804,002.69	31,456,424.31
60	Technology Improvements	60,790,110.00	60,796,667.00	23,021,771.06	37,774,895.94
	Construction/Renovation	**560,921,640.00**	**557,201,198.00**	**52,733,886.39**	**504,467,311.61**
81	Curriculum and Instructional Materials	1,800,000.00	5,452,003.00	1,312,790.04	4,139,212.96
82	Copy Machines	585,300.00	585,300.00	193,412.28	391,887.72
83	Maintenance	273,500.00	298,500.00	249,746.90	48,753.10
84	Transortation	9,620,000.00	9,620,000.00	570,704.49	9,049,295.51
85	District Furniture & Equipment	1,500,000.00	1,550,000.00	200,361.96	1,349,638.04
86	FANS Equipment	0.00	3,879,972.00	27,769.08	3,852,202.92
90	Land	15,000,000.00	15,125,001.00	15,090,166.38	34,834.62
91	Bond Closing	4,000,000.00	4,000,000.00	2,059,864.36	1,940,135.64
94	Contingency	12,000,000.00	55,093,271.00	0.00	55,093,271.00
95	Program Management	3,500,000.00	3,500,000.00	288,388.61	3,211,611.39
98	Miscellaneous	0.00	315,000.00	340,331.26	(25,331.26)
	Other Programs	**48,278,800.00**	**99,419,047.00**	**20,333,535.36**	**79,085,511.64**
	Total 2023 Bond Program	**609,200,440.00**	**656,620,245.00**	**73,067,421.75**	**583,552,823.25**

Lake Travis ISD
2024 Bond Program - Athletics
January 31, 2025

	Resources	Original Budget	Amended Budget	Total Resources	Balance
1	Bond Proceeds -Athletics	143,093,994.00	143,093,994.00	33,440,000.00	109,653,994.00
2	Interest Revenue	0.00	3,000,000.00	1,576,981.38	1,423,018.62
3	Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4	Bond Premiums	0.00	1,855,303.00	1,855,303.30	(0.30)
	Total Resources	**143,093,994.00**	**147,949,297.00**	**36,872,284.68**	**111,077,012.32**

	Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10	Lake Travis High School	35,638,190.00	35,638,190.00	3,919,655.95	31,718,534.05
20	High School No. 2	102,748,000.00	102,748,000.00	0.00	102,748,000.00
30	Lake Travis Middle School	1,200,000.00	1,200,000.00	0.00	1,200,000.00
40	Hudson Bend Middle School	2,307,804.00	2,307,804.00	130,080.00	2,177,724.00
50	Bee Cave Middle School	1,200,000.00	1,200,000.00	0.00	1,200,000.00
91	Bond Closing	0.00	500,000.00	295,303.30	204,696.70
94	Contingency	0.00	4,355,303.00	0.00	4,355,303.00
	Construction/Renovation	**143,093,994.00**	**147,949,297.00**	**4,345,039.25**	**143,604,257.75**
	Total 2024 Bond Program	**143,093,994.00**	**147,949,297.00**	**4,345,039.25**	**143,604,257.75**

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Strategic Plan Update

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
As part of our ongoing commitment to assessing and enhancing student success beyond graduation, this strategic plan update will provide an analysis of alumni data, specifically focusing on postsecondary enrollment and completion trends. Using data from the National Student Clearinghouse's *StudentTracker for High Schools Aggregate Report*, we can track where our graduates are attending college, their persistence rates, and degree completion outcomes.

This data-driven approach allows us to:

- Evaluate how well our district is preparing students for postsecondary success.
- Identify trends in college enrollment and completion to inform strategic decisions.
- Strengthen partnerships with higher education institutions and refine college and career readiness initiatives.
- Address potential gaps in student support by analyzing persistence and graduation rates.

By leveraging this information, we can ensure our district continues to equip students with the skills and resources necessary for long-term success. This presentation will outline key findings, implications for district programming, and next steps for improving postsecondary outcomes.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Tasha Barker - Assistant Superintendent of Organizational Services

ATTACHMENTS
Strategic Plan Presentation

MEETING DATE
February 19, 2025

NATIONAL STUDENT CLEARINGHOUSE®

StudentTracker® for High Schools

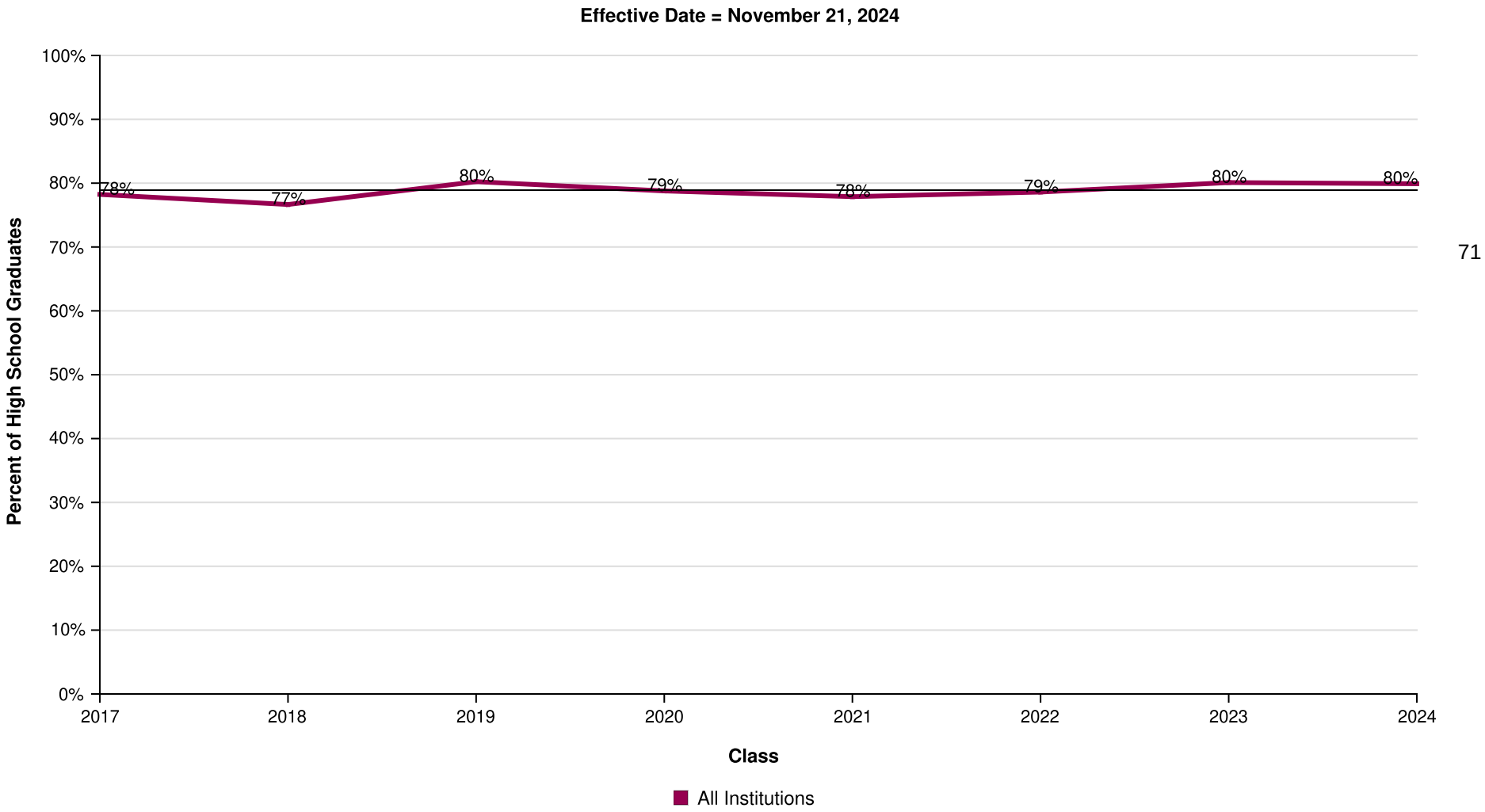
Aggregate Report

Prepared for
Lake Travis High School
ACT Code: 440311

NATIONAL STUDENT CLEARINGHOUSE®

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Percent of Students Enrolled in College the Fall Immediately After High School



71

Lake Travis High School

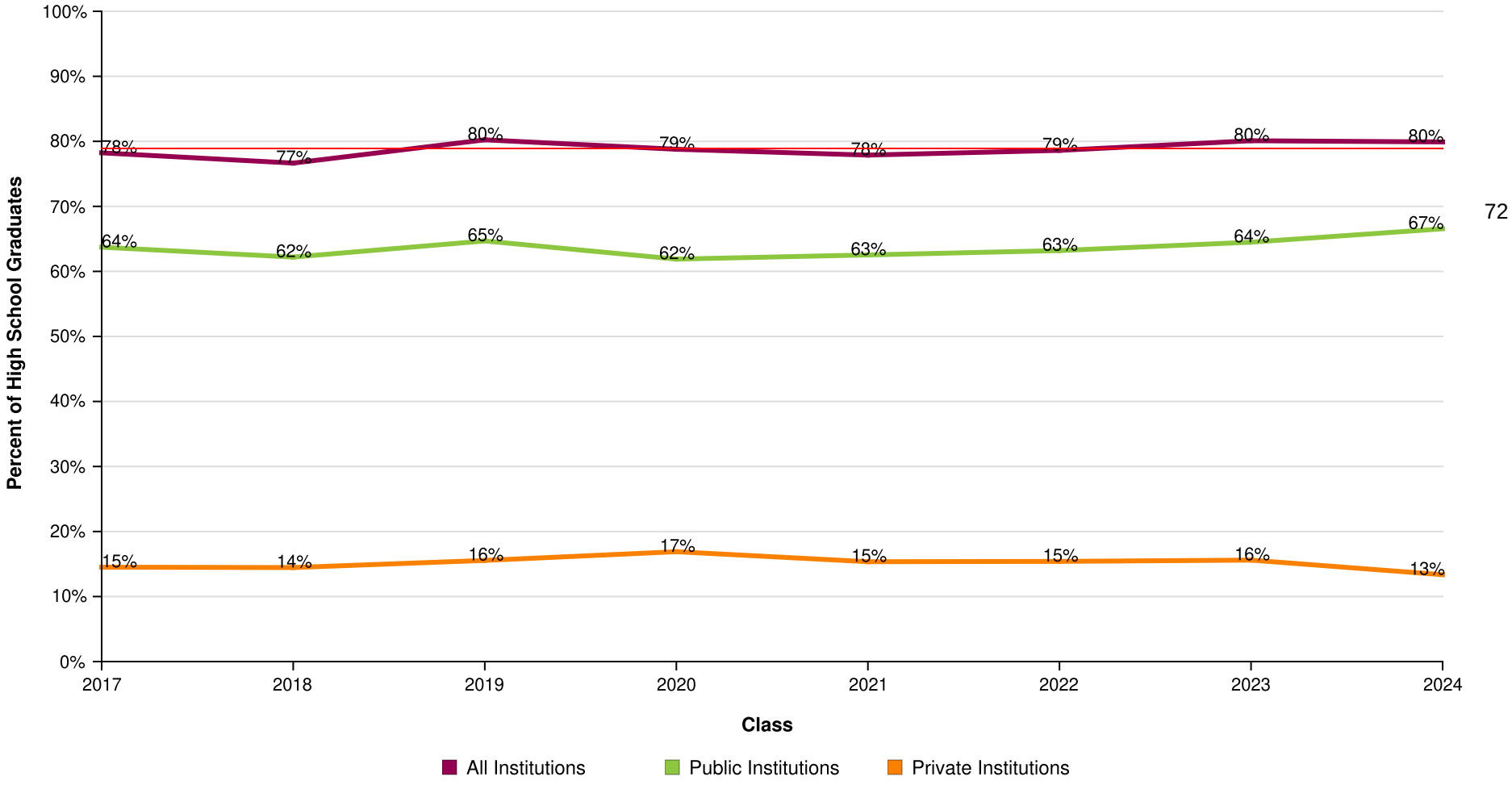
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Percent of Students Enrolled in College the Fall Immediately After High School by Institutional Type

Effective Date = November 21, 2024



72

AVG = 79%

Lake Travis High School

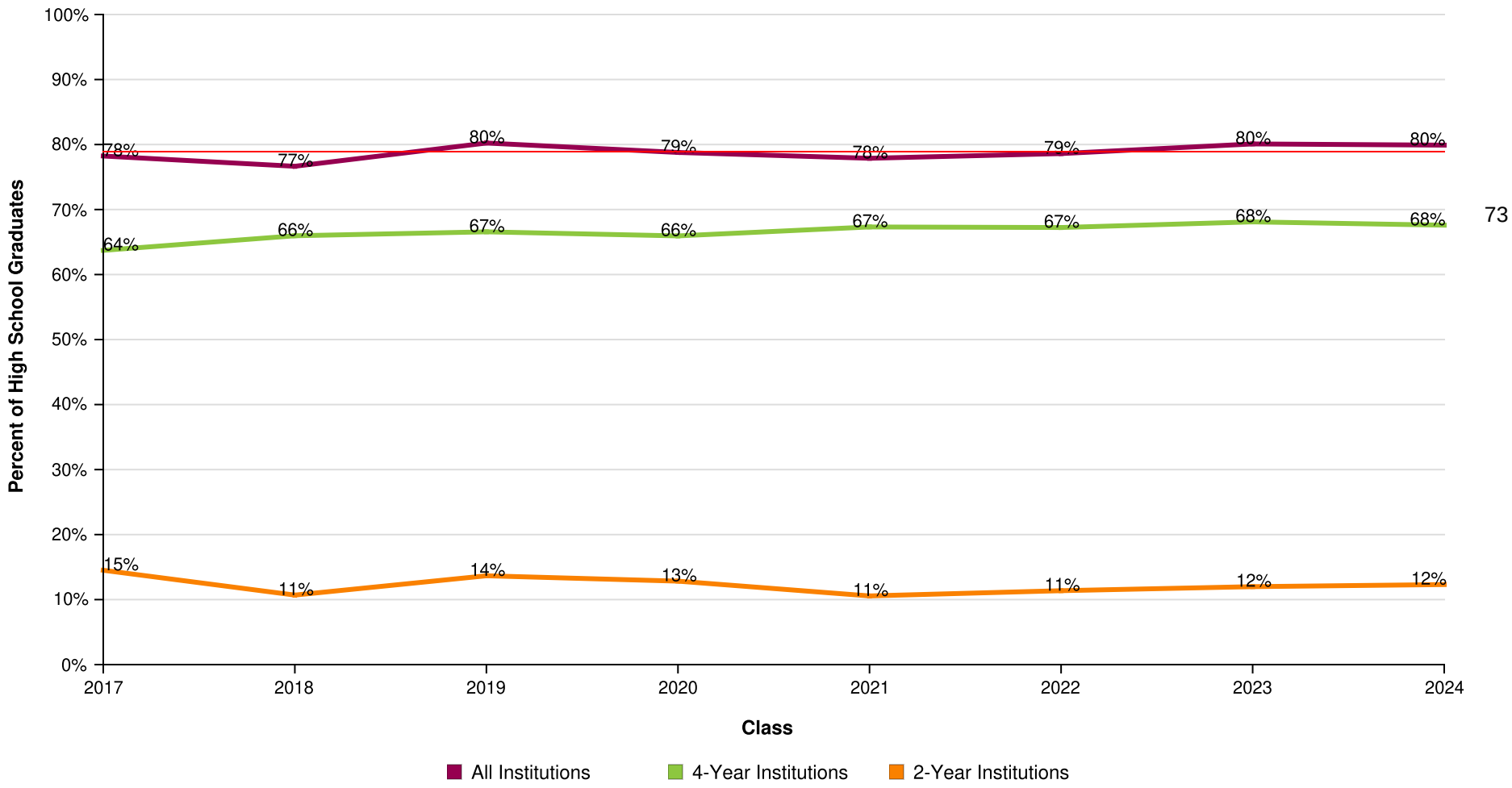
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Percent of Students Enrolled in College the Fall Immediately After High School by Institutional Level

Effective Date = November 21, 2024



73

AVG = 79%

Lake Travis High School

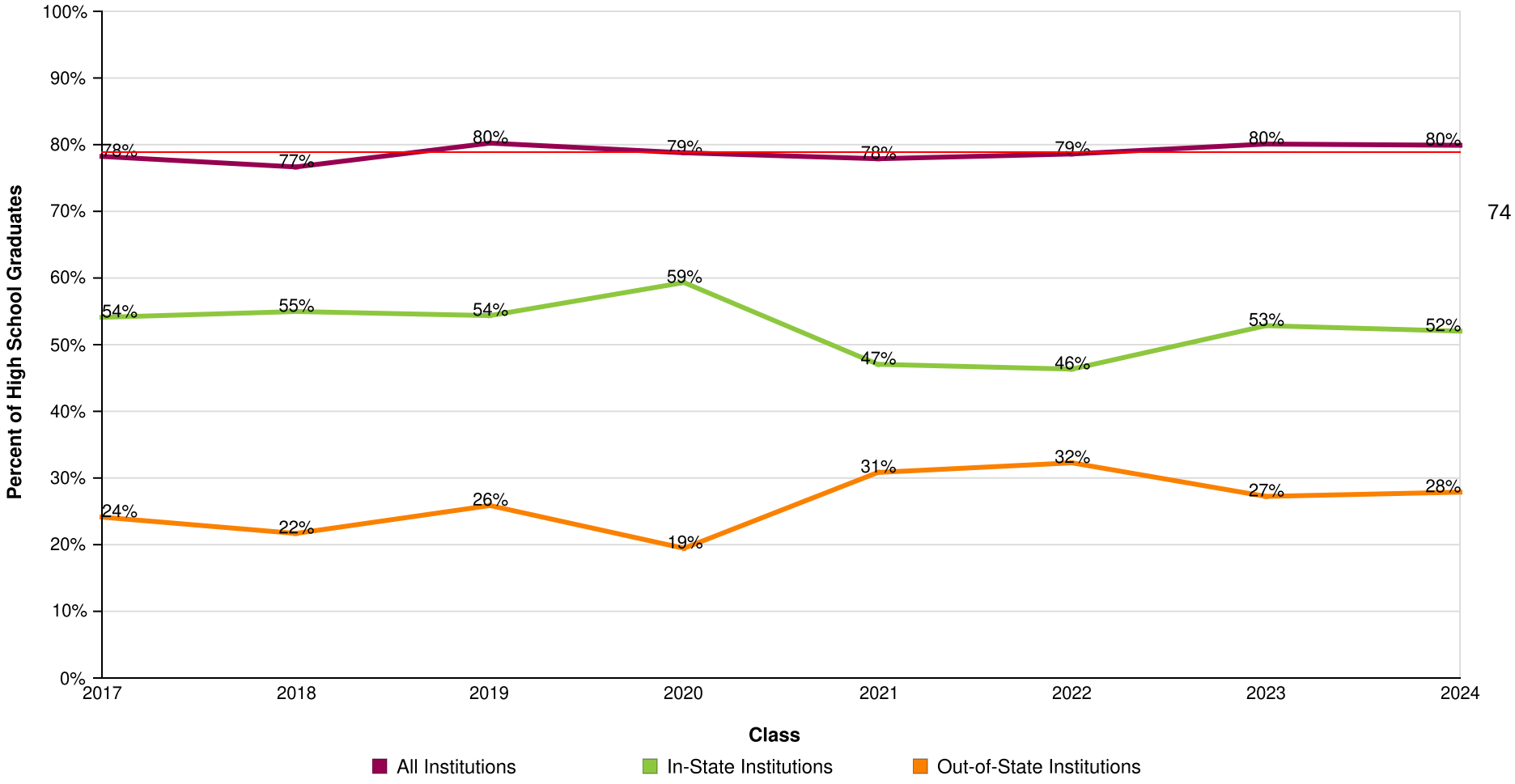
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Percent of Students Enrolled in College the Fall Immediately After High School by Institutional Location

Effective Date = November 21, 2024



74

AVG = 79%

Lake Travis High School

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Count of Students Enrolled in College the Fall Immediately After High School

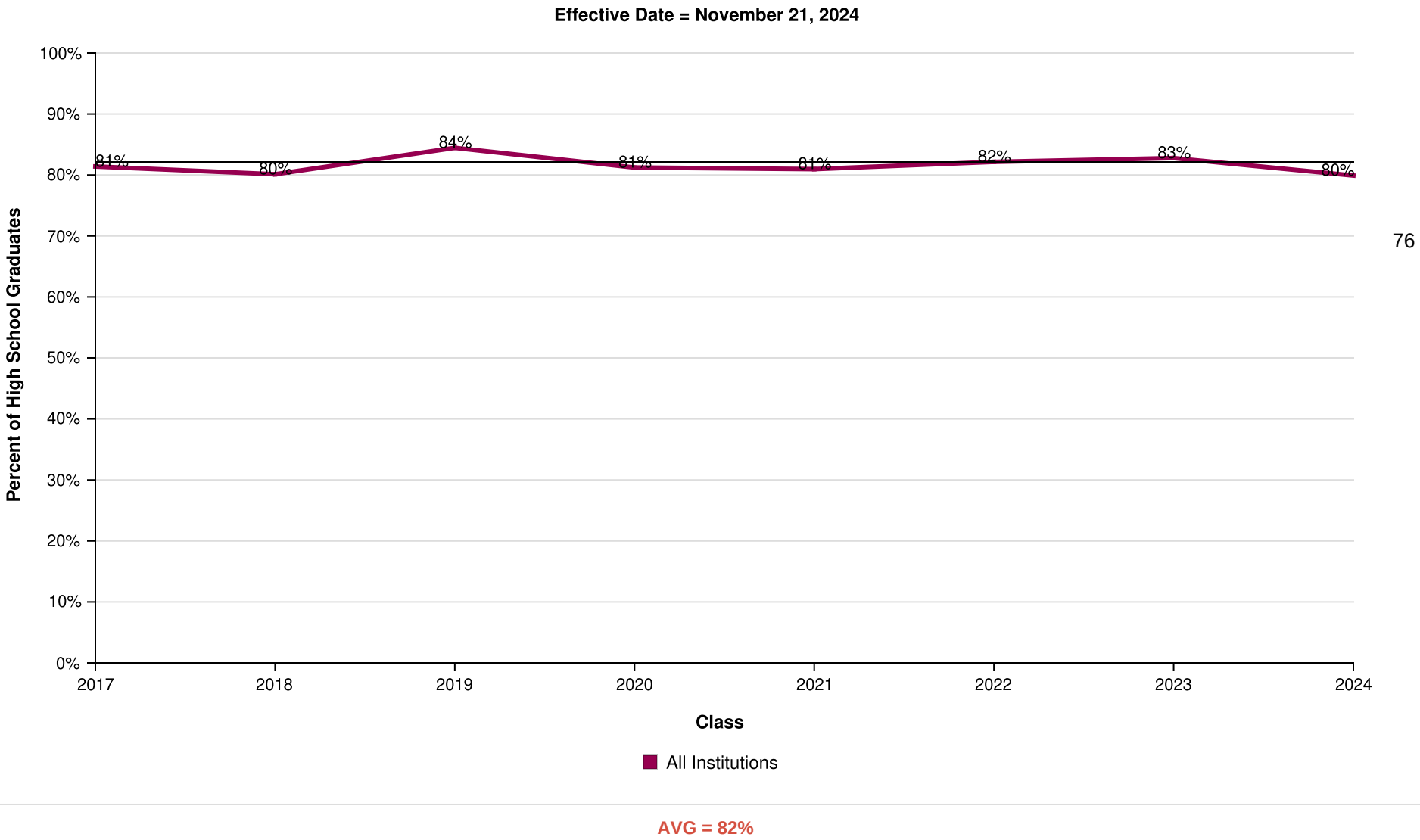
Effective Date = November 21, 2024

Class of	2017	2018	2019	2020	2021	2022	2023	2024
Total in the Class	634	664	688	740	814	818	859	861
Total Enrolled	496	509	552	583	634	643	688	688
Total in Public	404	413	445	458	509	517	554	573
Total in Private	92	96	107	125	125	126	134	115
Total in 4-Year	404	438	458	488	548	550	585	582
Total in 2-Year	92	71	94	95	86	93	103	106
Total In-State	343	365	374	439	383	379	454	448
Total Out-of-State	153	144	178	144	251	264	234	240

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Percent of Students Enrolled in College at Any Time During the First Year After High School



76

Lake Travis High School

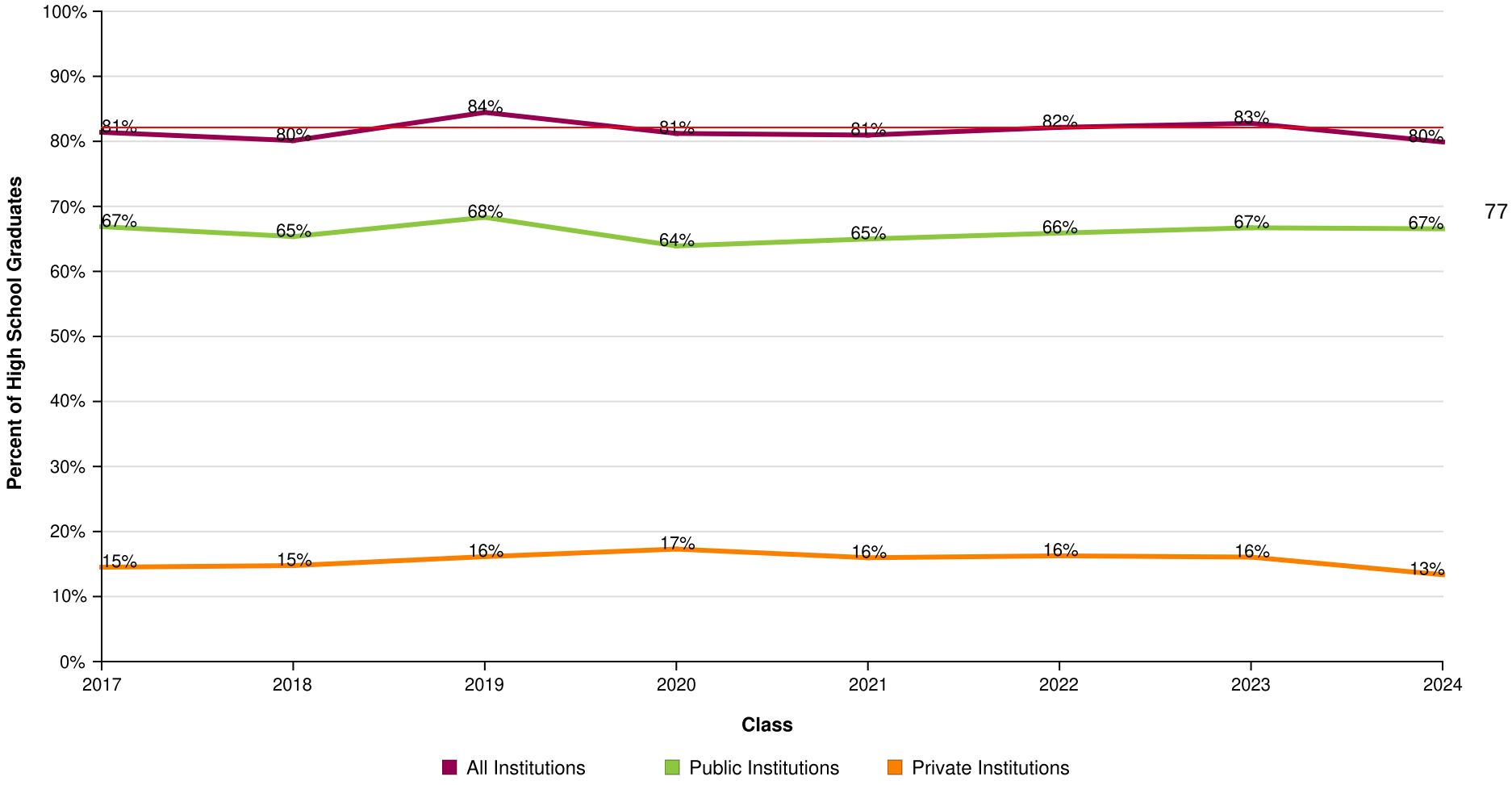
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Percent of Students Enrolled in College at Any Time During the First Year After High School by Institutional Type

Effective Date = November 21, 2024



77

AVG = 82%

Lake Travis High School

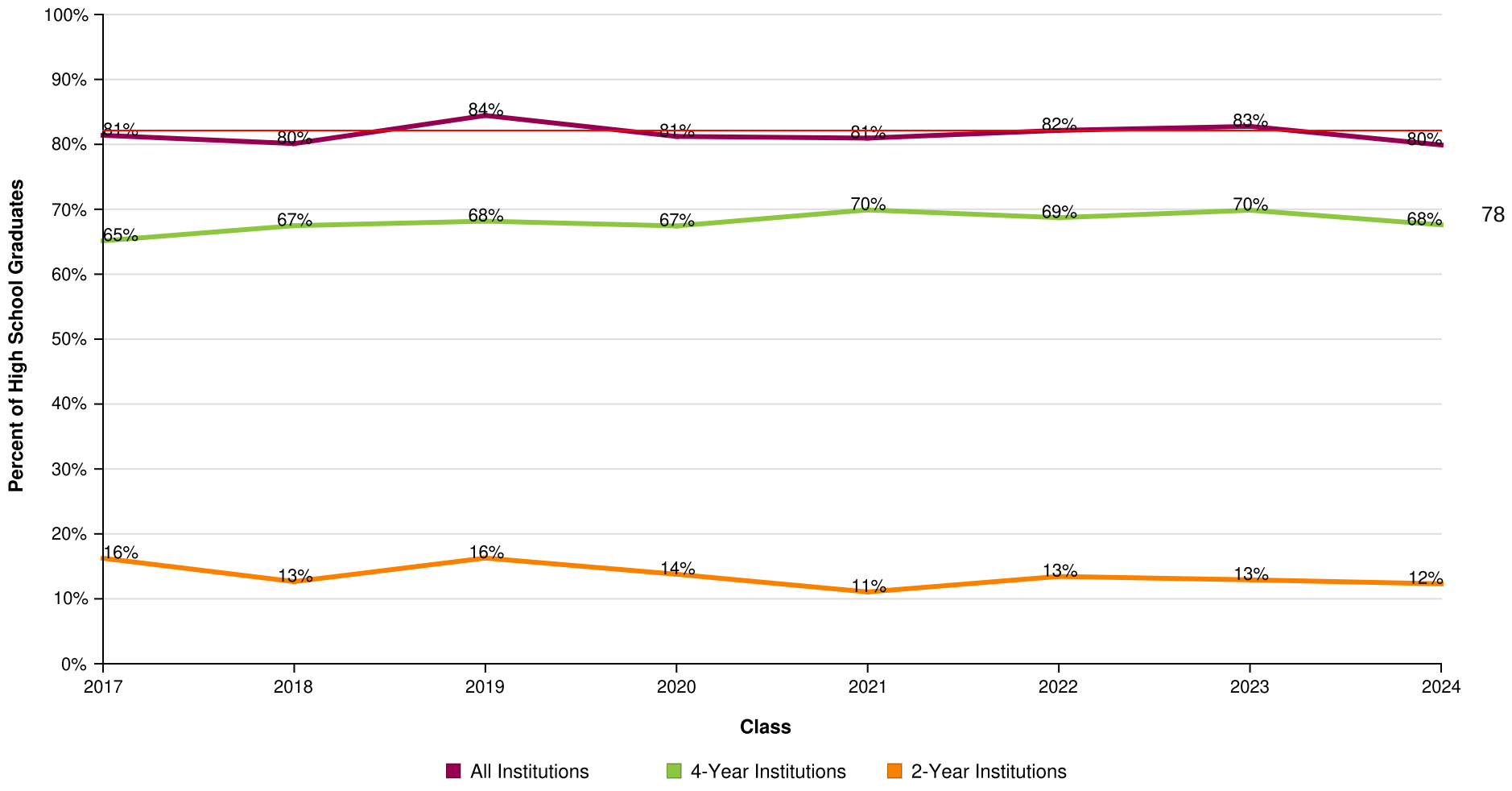
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Percent of Students Enrolled in College at Any Time During the First Year After High School by Institutional Level

Effective Date = November 21, 2024



78

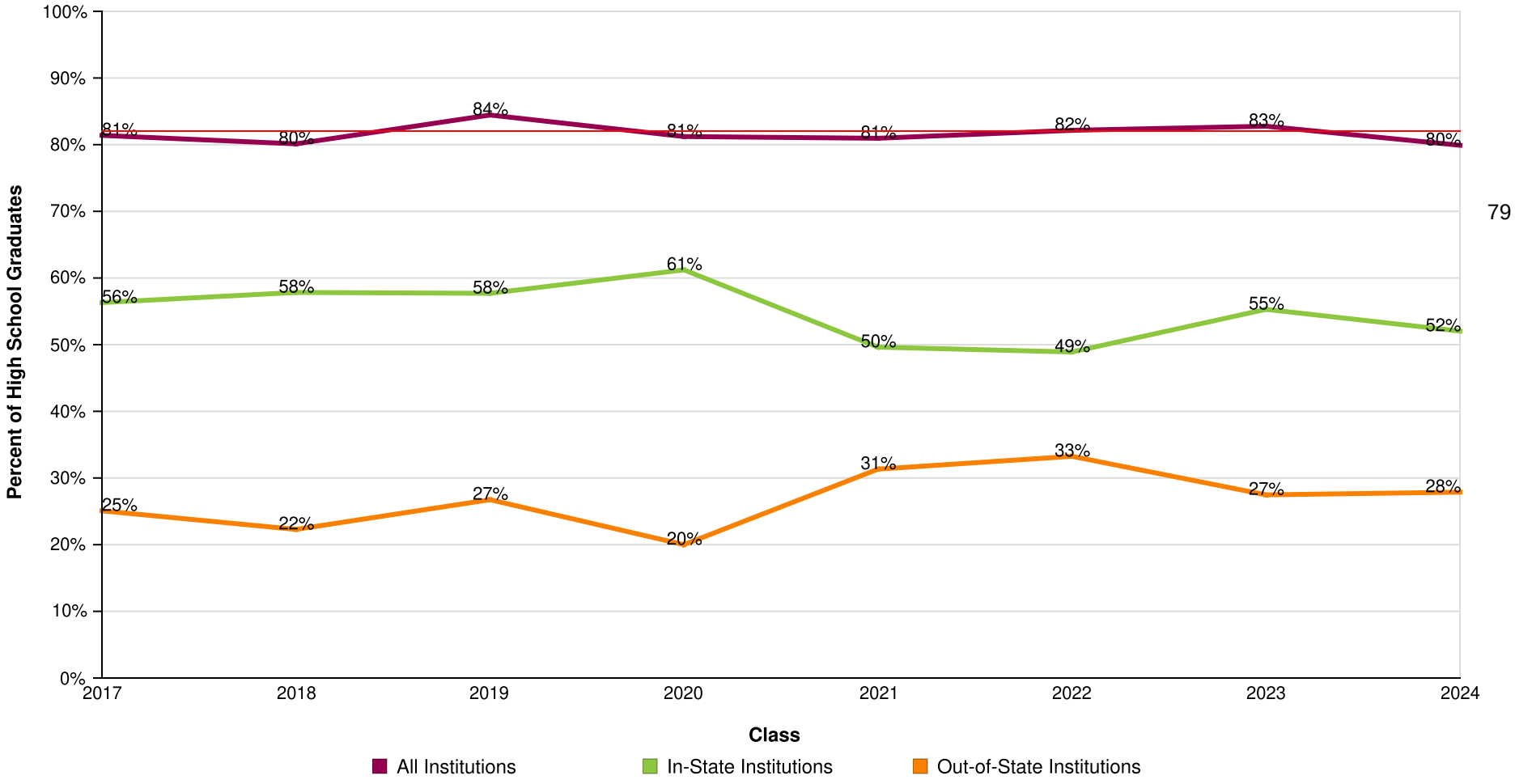
AVG = 82%

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Percent of Students Enrolled in College at Any Time During the First Year After High School by Institutional Location

Effective Date = November 21, 2024



79

AVG = 82%

Lake Travis High School

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Count of Students Enrolled in College at Any Time During the First Year After High School

Effective Date = November 21, 2024

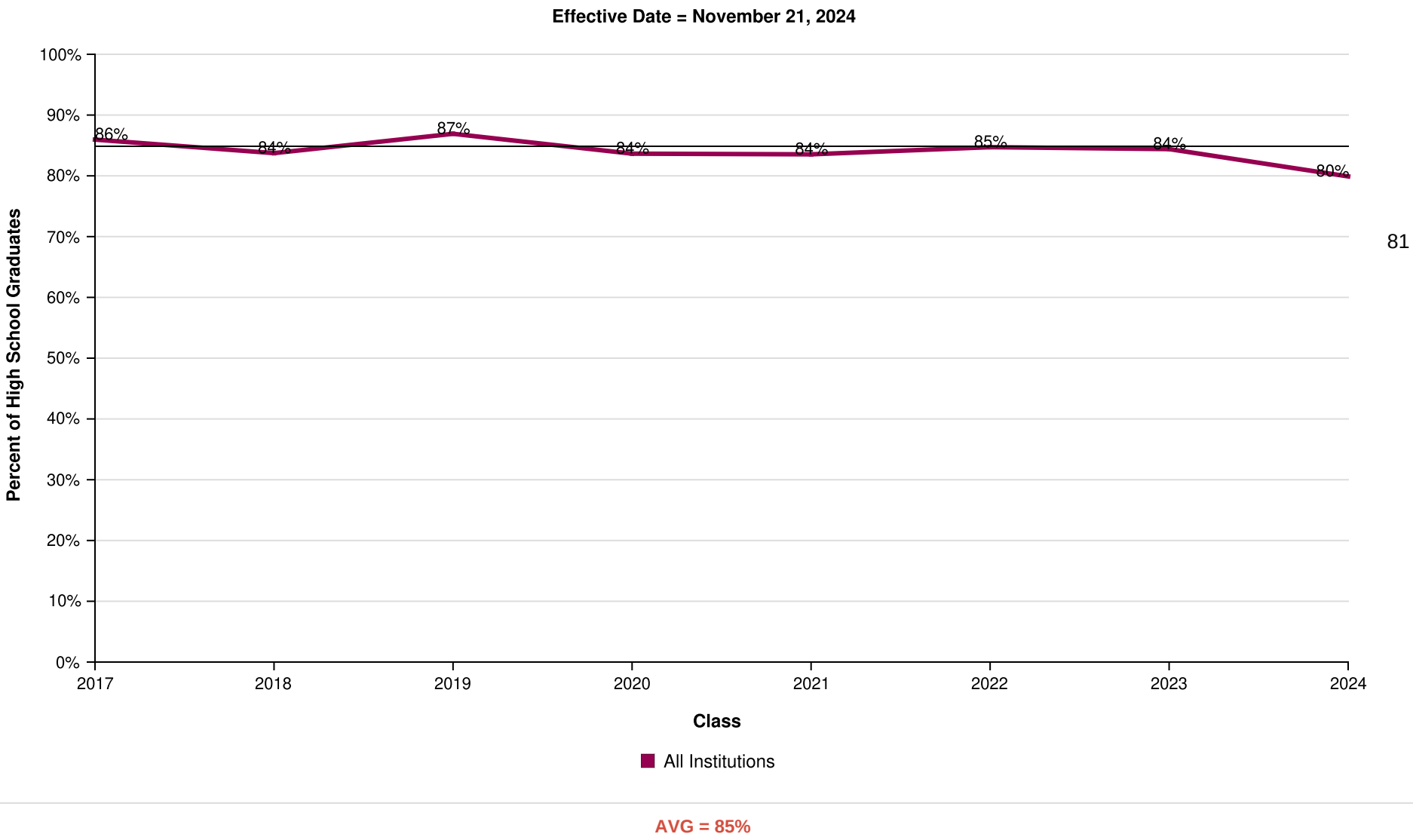
Class of	2017	2018	2019	2020	2021	2022	2023	2024
Total in the Class	634	664	688	740	814	818	859	861
Total Enrolled	516	532	581	601	659	672	711	688
Total in Public	424	434	470	473	529	539	573	573
Total in Private	92	98	111	128	130	133	138	115
Total in 4-Year	413	448	469	499	569	562	600	582
Total in 2-Year	103	84	112	102	90	110	111	106
Total In-State	357	384	397	453	404	400	475	448
Total Out-Of-State	159	148	184	148	255	272	236	240

80

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Percent of Students Enrolled in College at Any Time During the First Two Years After High School



81

Lake Travis High School

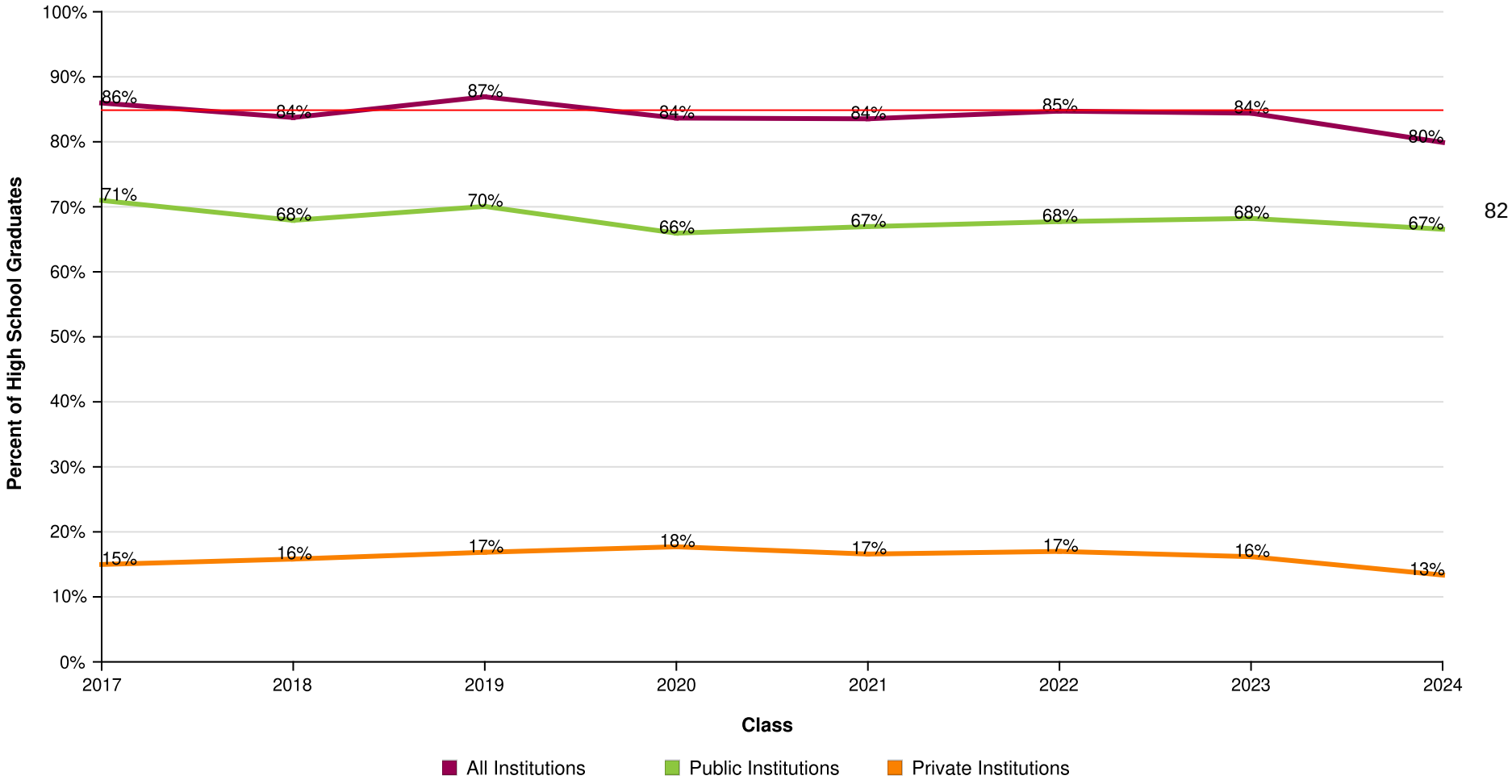
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Percent of Students Enrolled in College at Any Time During the First Two Years After High School by Institutional Type

Effective Date = November 21, 2024



82

AVG = 85%

Lake Travis High School

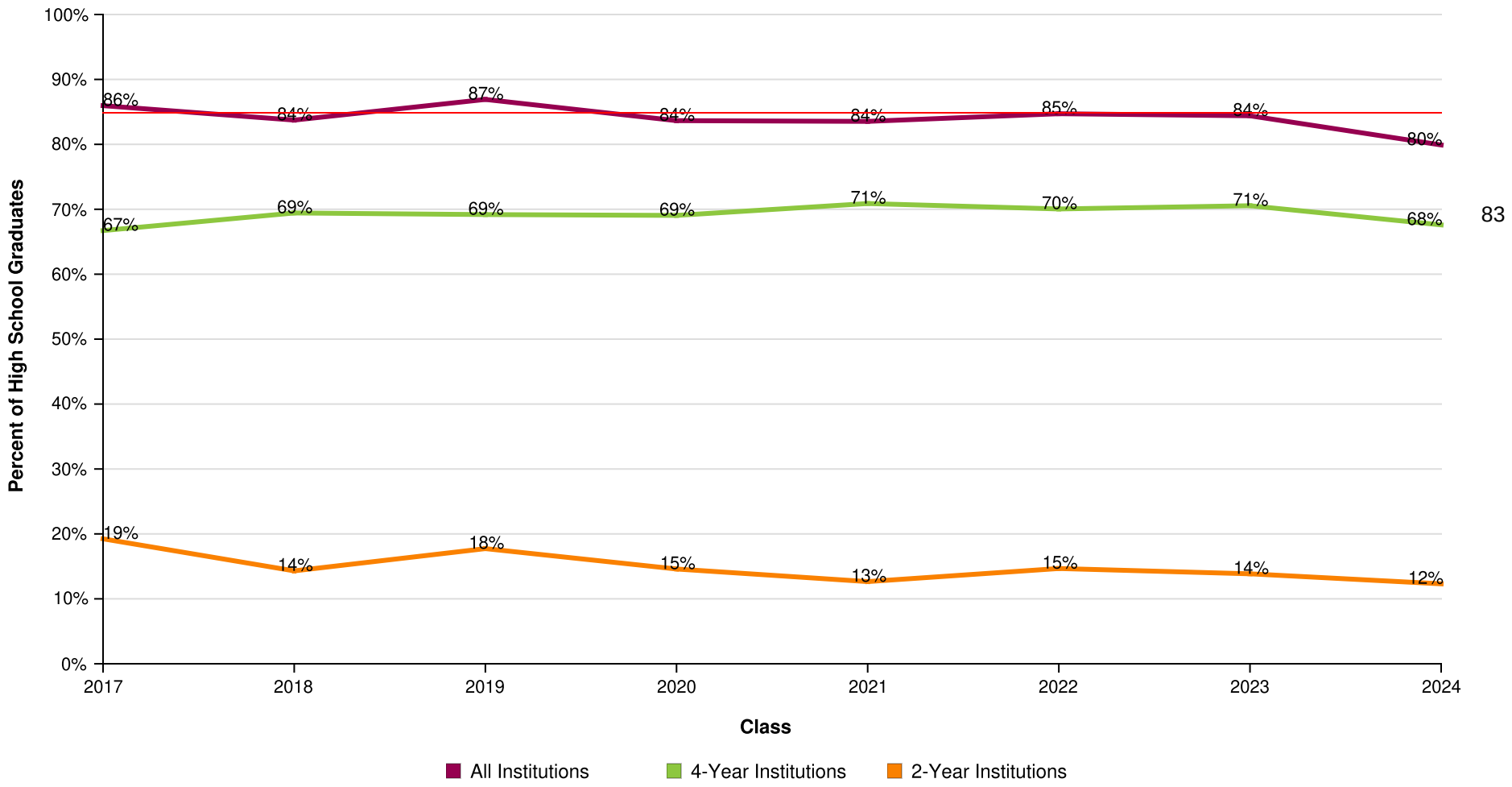
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Percent of Students Enrolled in College at Any Time During the First Two Years After High School by Institutional Level

Effective Date = November 21, 2024



83

AVG = 85%

Lake Travis High School

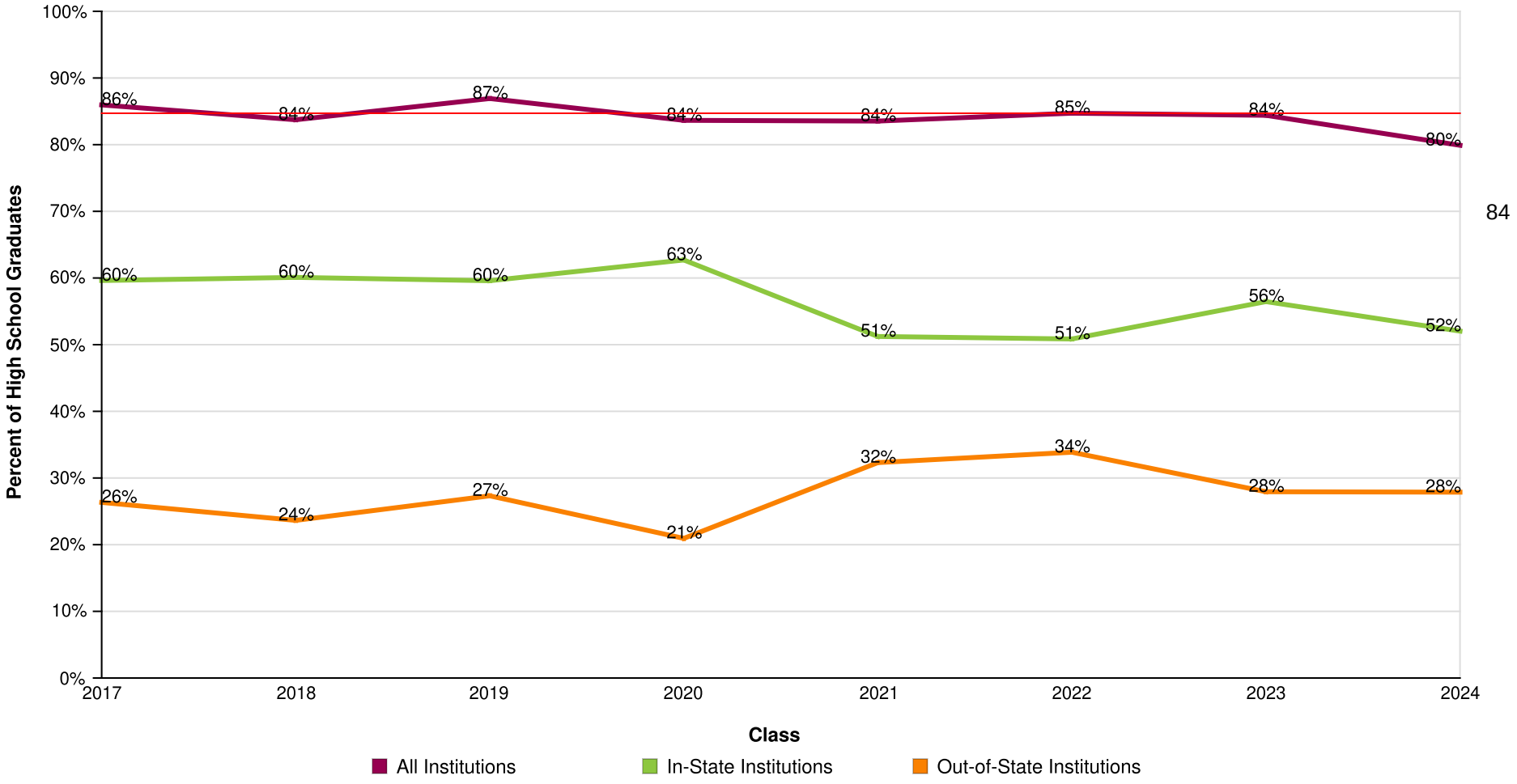
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Percent of Students Enrolled in College at Any Time During the First Two Years After High School by Institutional Location

Effective Date = November 21, 2024



84

AVG = 85%

Lake Travis High School

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Count of Students Enrolled in College at Any Time During the First Two Years After High School

Effective Date = November 21, 2024

Class of	2017	2018	2019	2020	2021	2022	2023	2024
Total in the Class	634	664	688	740	814	818	859	861
Total Enrolled	545	556	598	619	680	693	725	688
Total in Public	450	451	482	488	545	554	586	573
Total in Private	95	105	116	131	135	139	139	115
Total in 4-Year	423	461	476	511	577	573	606	582
Total in 2-Year	122	95	122	108	103	120	119	106
Total In-State	378	399	410	464	417	416	485	448
Total Out-of-State	167	157	188	155	263	277	240	240

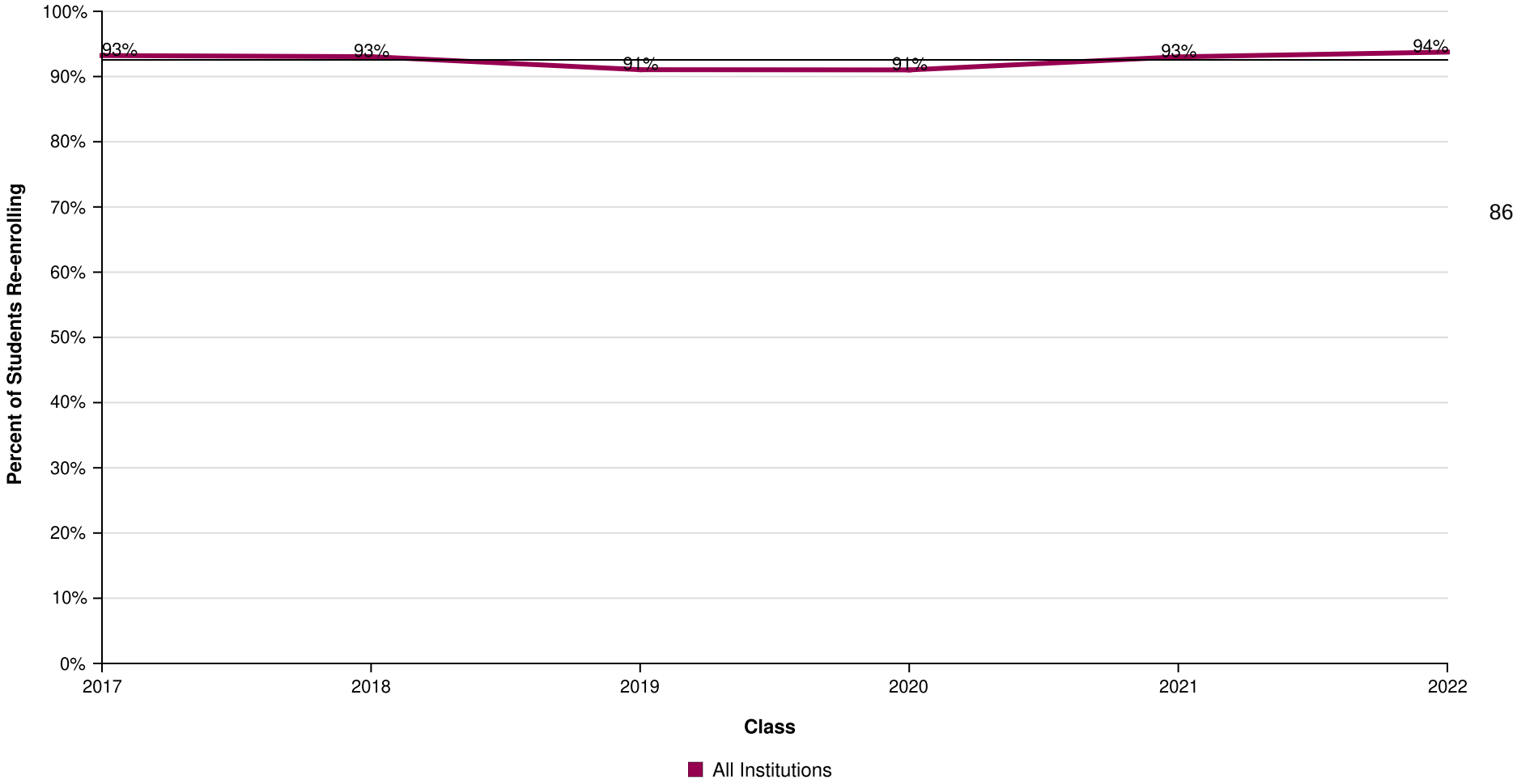
85

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Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence)

Effective Date = November 21, 2024



86

AVG = 93%

Lake Travis High School

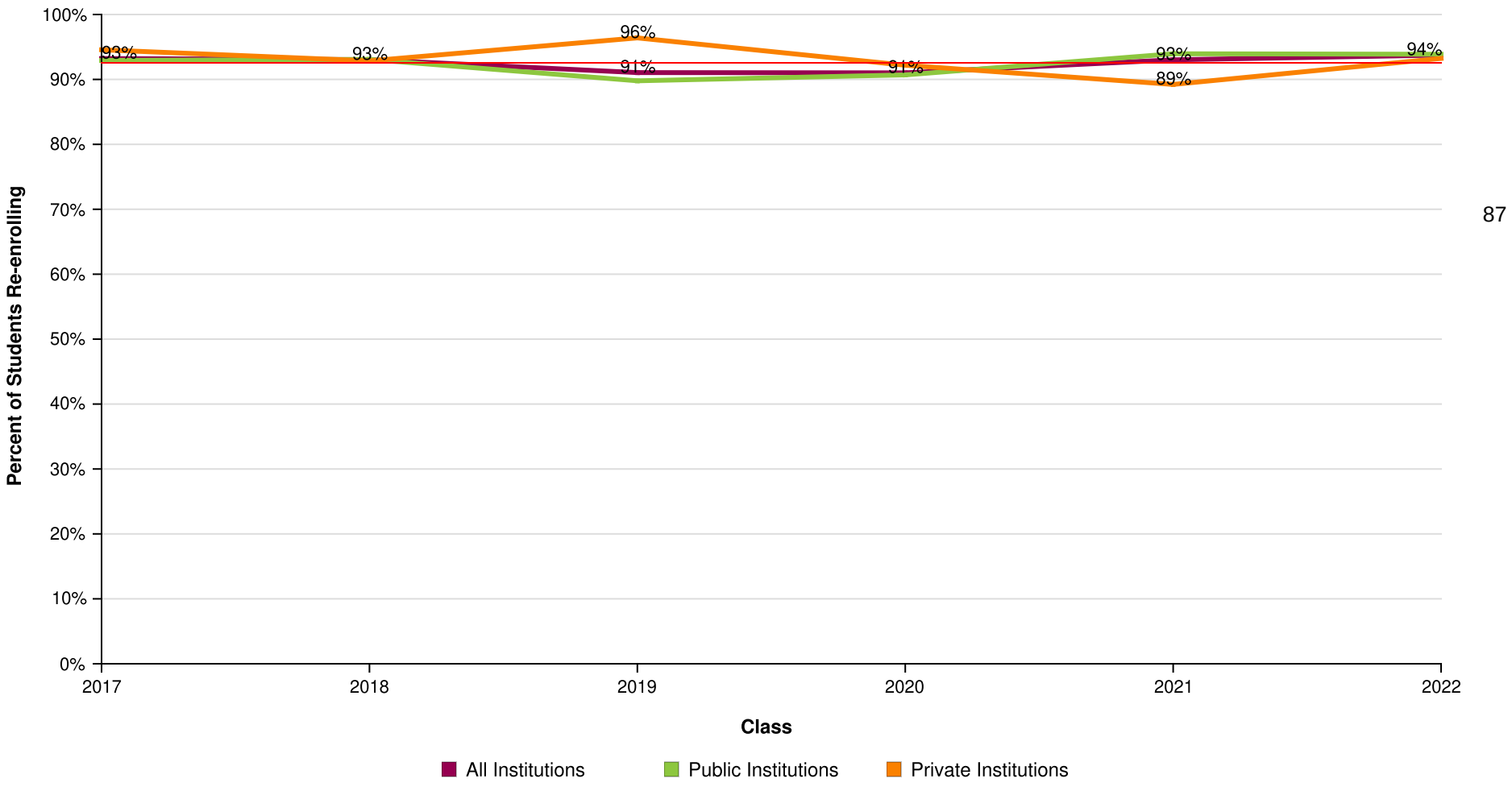
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Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence) by Institutional Type

Effective Date = November 21, 2024



87

AVG = 93%

Lake Travis High School

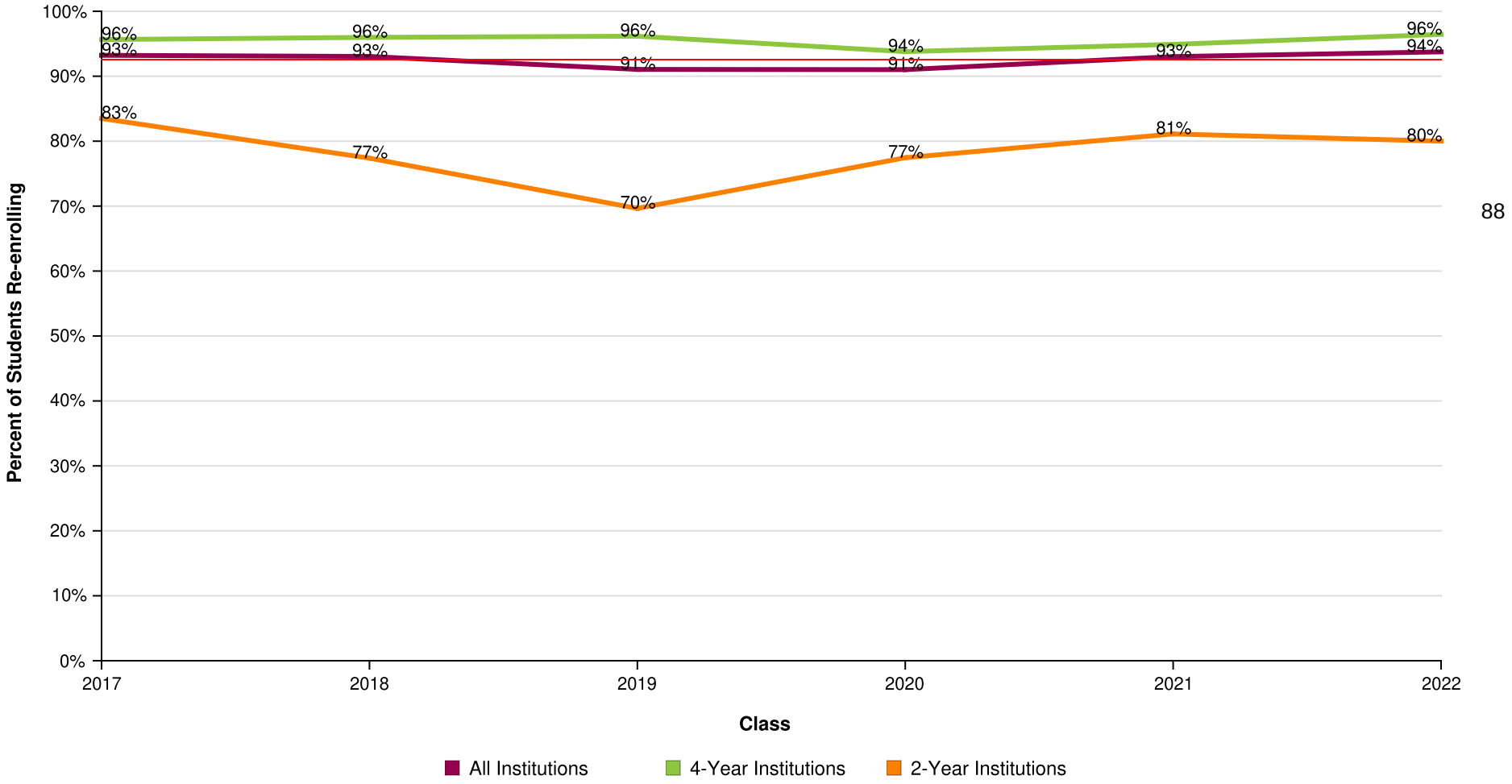
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Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence) by Institutional Level

Effective Date = November 21, 2024



88

AVG = 93%

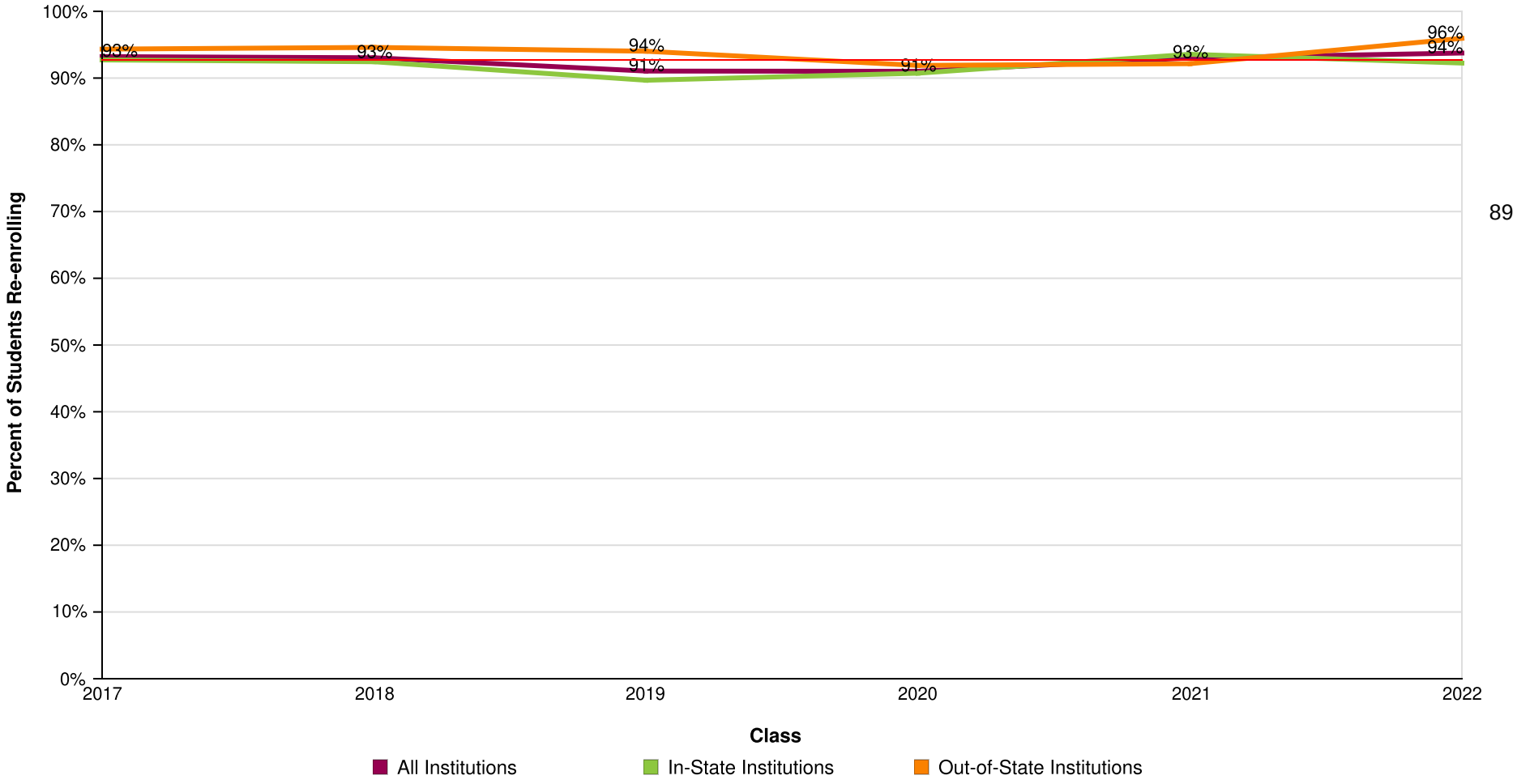
Lake Travis High School

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Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence) by Institutional Location

Effective Date = November 21, 2024



89

AVG = 93%

Lake Travis High School

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Count of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence)

Effective Date = November 21, 2024

Class of	2017	2018	2019	2020	2021	2022
Total in the Class	634	664	688	740	814	818
Enrolled Anywhere 1st Year	516	532	581	601	659	672
Enrolled Anywhere 2nd Year	481	495	529	547	613	630
In Public 1st Year	424	434	470	473	529	539
Enrolled Anywhere 2nd Year	394	404	422	429	497	506
In Private 1st Year	92	98	111	128	130	133
Enrolled Anywhere 2nd Year	87	91	107	118	116	124
In 4-Year 1st Year	413	448	469	499	569	562
Enrolled Anywhere 2nd Year	395	430	451	468	540	542
In 2-Year 1st Year	103	84	112	102	90	110
Enrolled Anywhere 2nd Year	86	65	78	79	73	88
In-State 1st Year	357	384	397	453	404	400
Enrolled Anywhere 2nd Year	331	355	356	411	378	369
Out-of-State 1st Year	159	148	184	148	255	272
Enrolled Anywhere 2nd Year	150	140	173	136	235	261

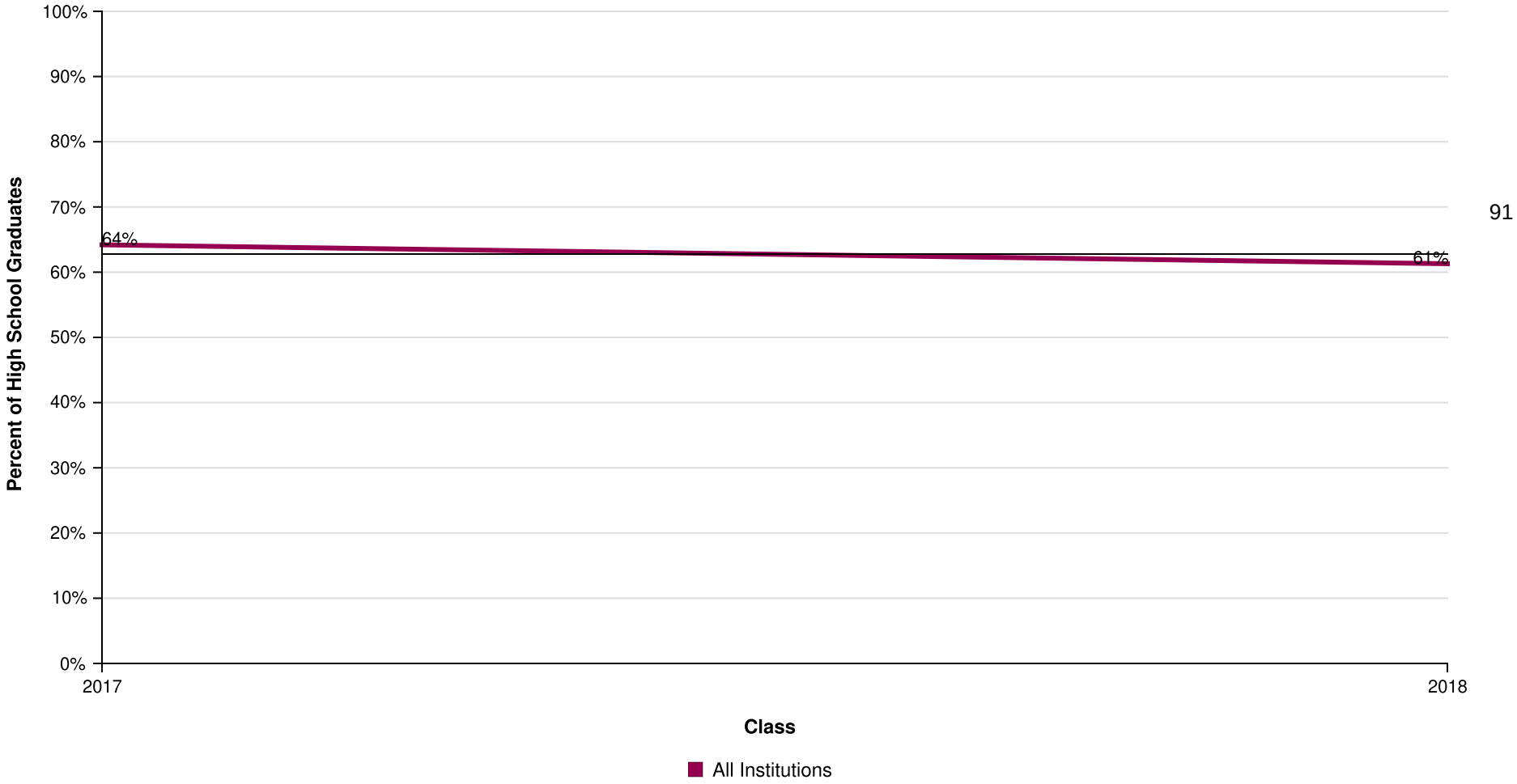
90

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Percent of High School Class Who Completed a Degree Within Six Years

Effective Date = November 21, 2024



91

AVG = 63%

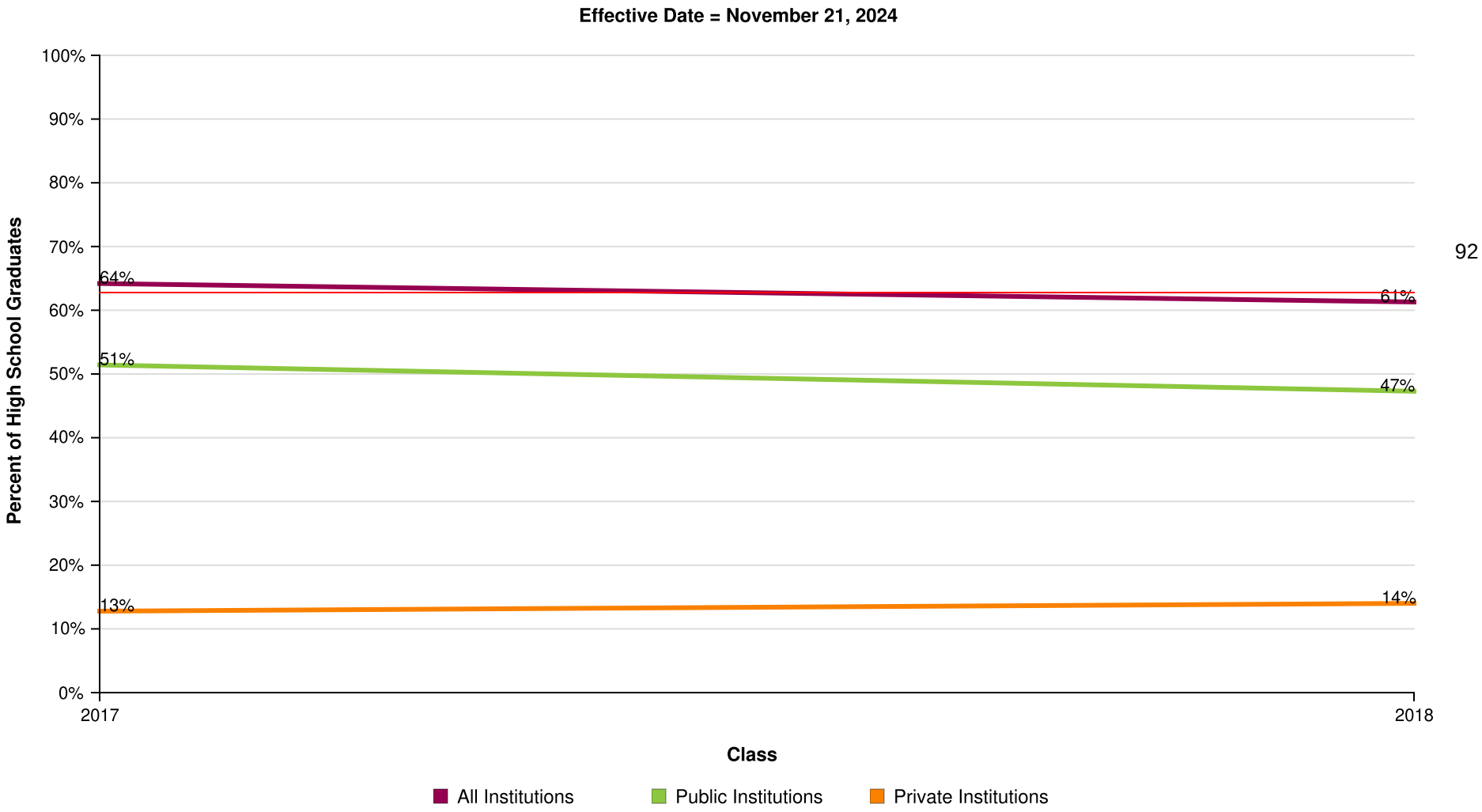
Lake Travis High School

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Percent of High School Class Who Completed a Degree Within Six Years by Institutional Type



92

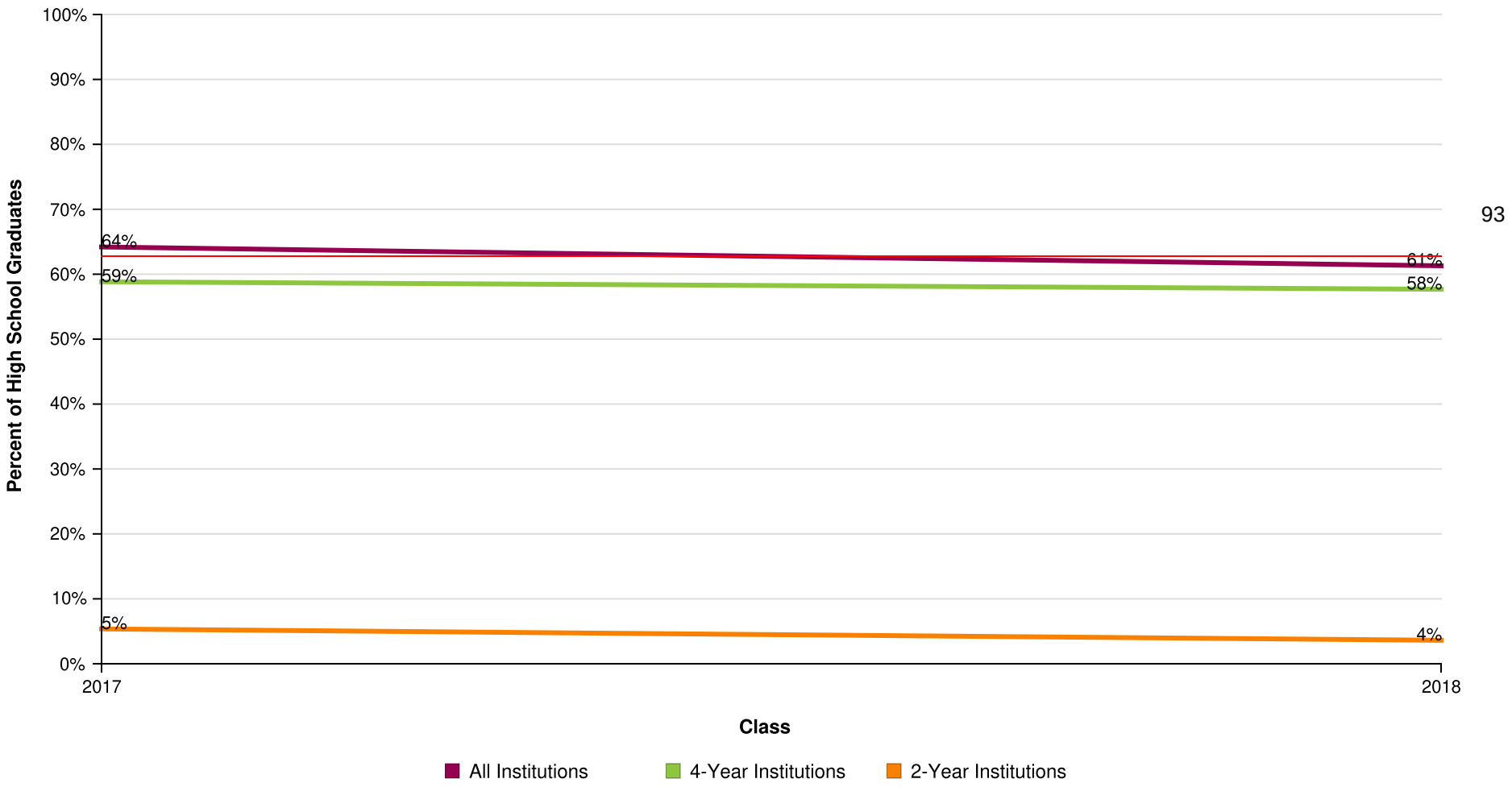
AVG = 63%

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Percent of High School Class Who Completed a Degree Within Six Years by Institutional Level

Effective Date = November 21, 2024



93

AVG = 63%

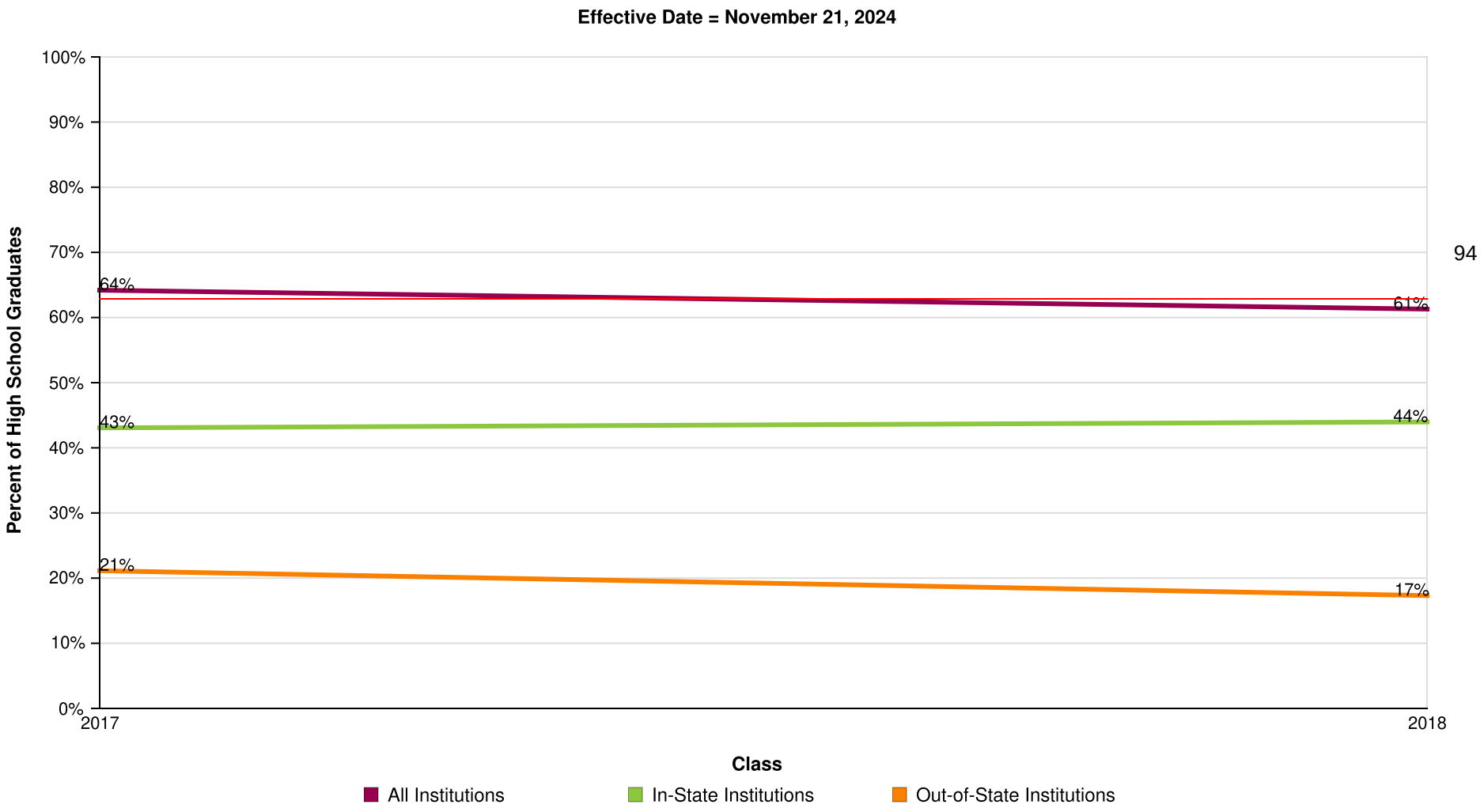
Lake Travis High School

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Percent of High School Class Who Completed a Degree Within Six Years by Institutional Location



94

AVG = 63%

Lake Travis High School

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Count of High School Graduates with a College Degree

Effective Date = November 21, 2024

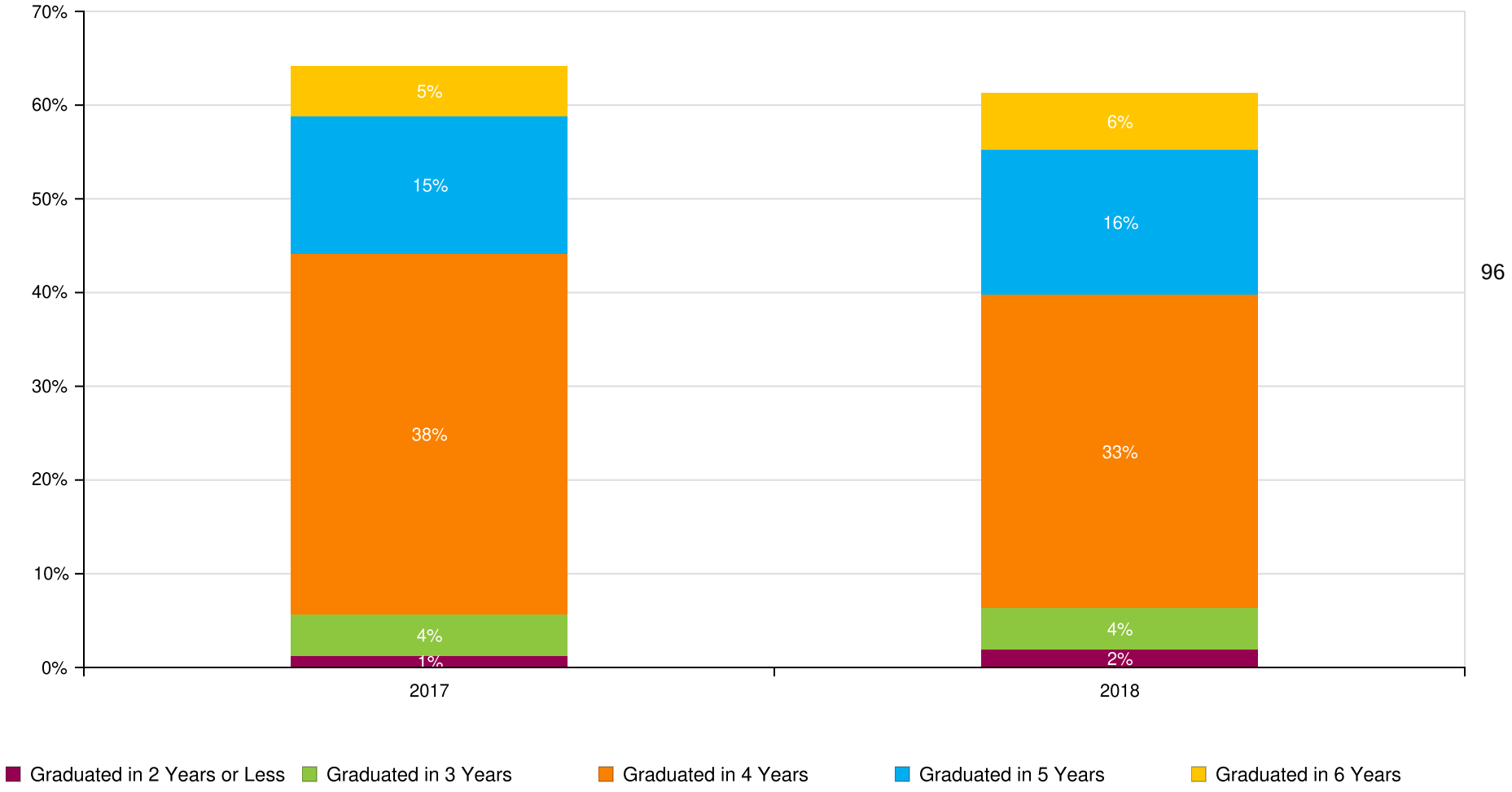
Class of	2017	2018
Total in the Class	634	664
Total With a Degree	407	407
Total from Public	326	314
Total from Private	81	93
Total from 4-Year	373	383
Total from 2-Year	34	24
Total In-State	273	292
Total Out-Of-State	134	115

95

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Time to College Graduation Within Six Years (Associate's, Bachelor's and Higher)



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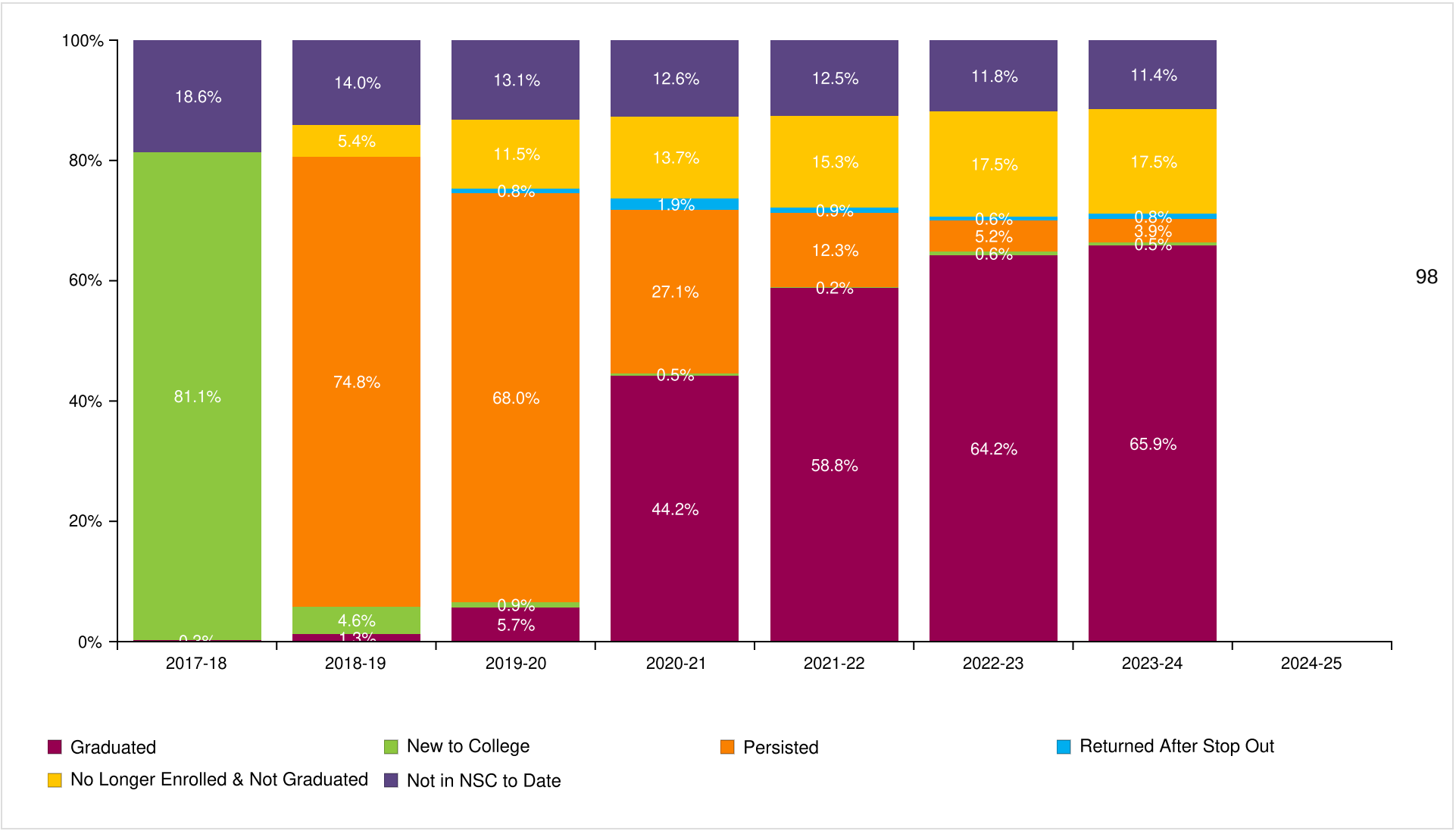
Count of Time to College Graduation within Six Years

Class of	2017	2018
Total In the Class	634	664
Graduated in 2 Years or Less	8	13
Graduated in 3 Years	28	29
Graduated in 4 Years	244	222
Graduated in 5 Years	93	103
Graduated in 6 Years	34	40

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Class of 2017 Postsecondary Enrollment and Progress



98

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Count of Class 2017 Postsecondary Enrollment and Progress

Total in the Class: 634

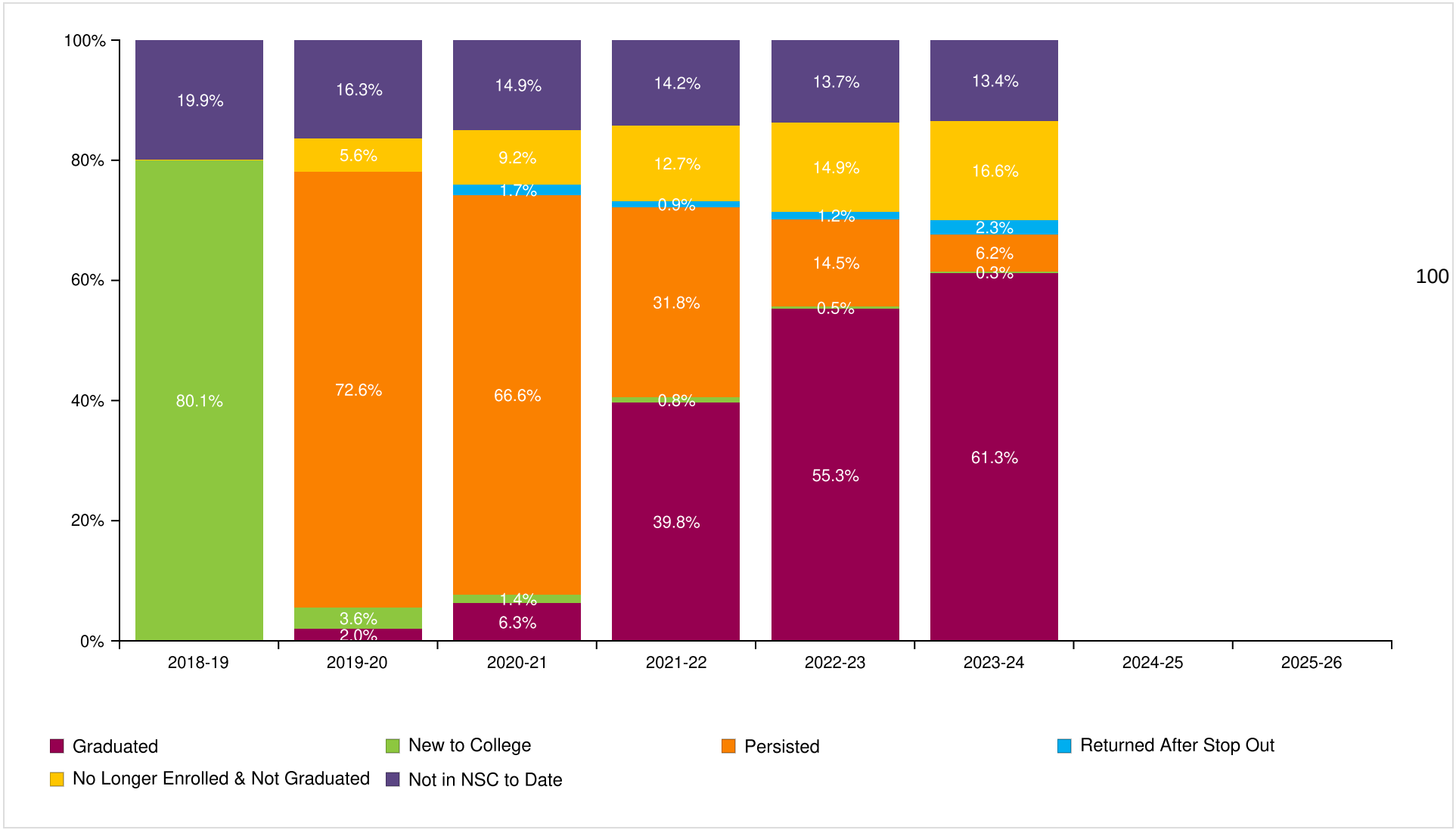
Academic Years	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
New to College	514	29	6	3	1	4	3	0
Persisted	0	474	431	172	78	33	25	0
Returned After Stop Out	0	0	5	12	6	4	5	0
No Longer Enrolled & Not Graduated	0	34	73	87	97	111	111	0
Graduated	2	8	36	280	373	407	418	0
Not in NSC to Date	118	89	83	80	79	75	72	0

99

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Class of 2018 Postsecondary Enrollment and Progress



100

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Count of Class 2018 Postsecondary Enrollment and Progress

Total in the Class: 664

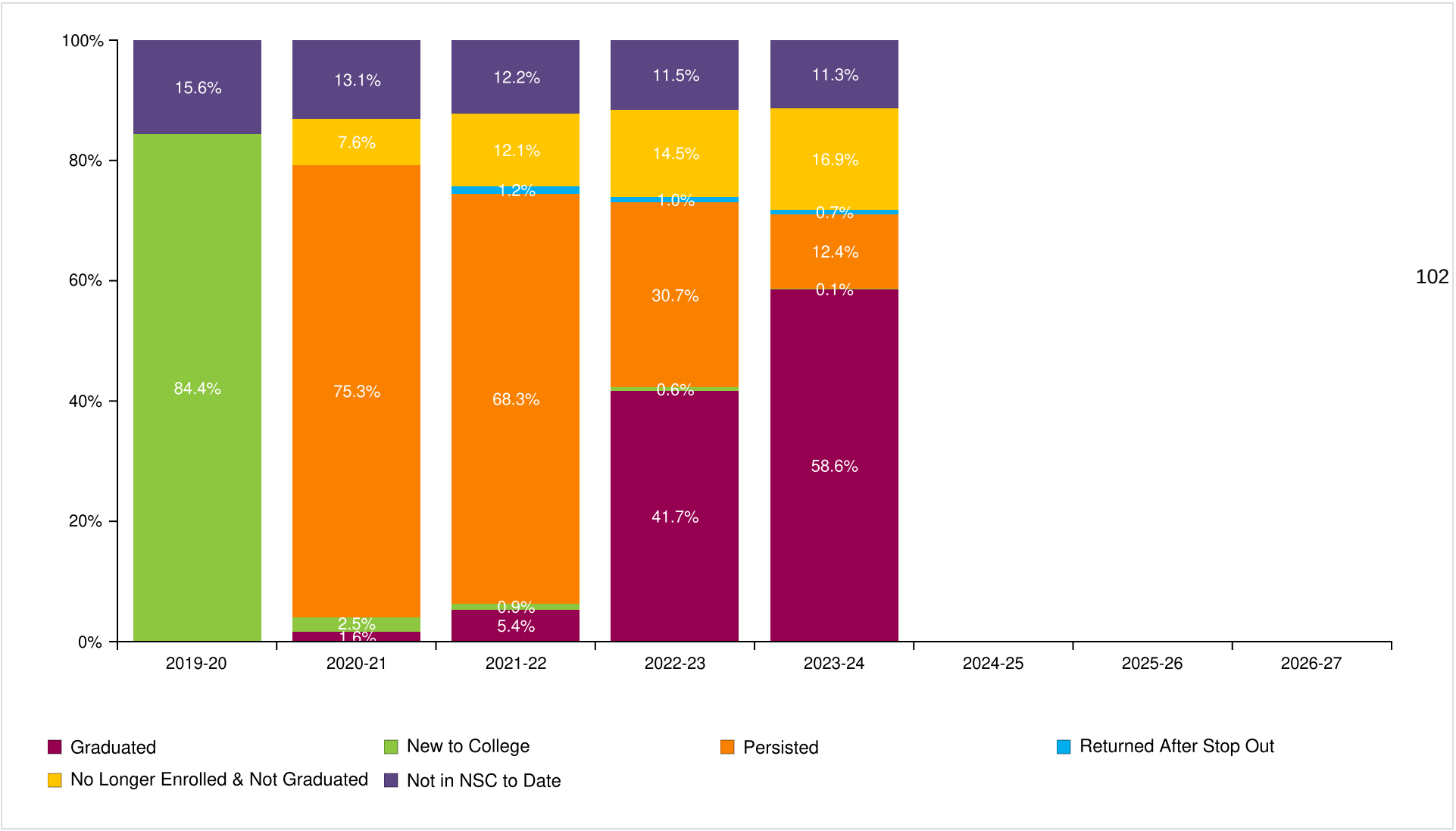
Academic Years	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26
New to College	532	24	9	5	3	2	0	0
Persisted	0	482	442	211	96	41	0	0
Returned After Stop Out	0	0	11	6	8	15	0	0
No Longer Enrolled & Not Graduated	0	37	61	84	99	110	0	0
Graduated	0	13	42	264	367	407	0	0
Not in NSC to Date	132	108	99	94	91	89	0	0

101

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Class of 2019 Postsecondary Enrollment and Progress



Lake Travis High School

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Count of Class 2019 Postsecondary Enrollment and Progress

Total in the Class: 688

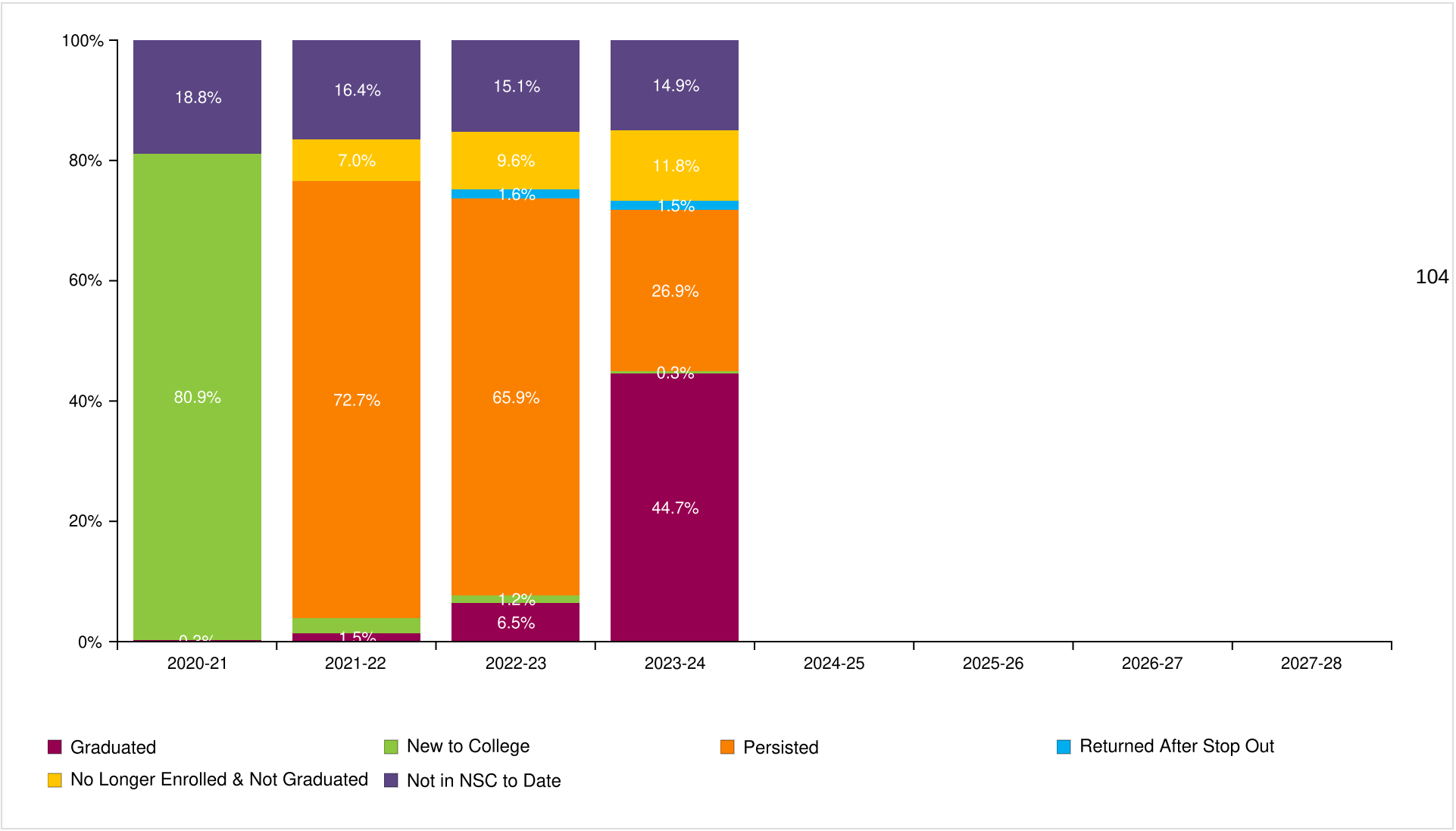
Academic Years	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27
New to College	581	17	6	4	1	0	0	0
Persisted	0	518	470	211	85	0	0	0
Returned After Stop Out	0	0	8	7	5	0	0	0
No Longer Enrolled & Not Graduated	0	52	83	100	116	0	0	0
Graduated	0	11	37	287	403	0	0	0
Not in NSC to Date	107	90	84	79	78	0	0	0

103

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Class of 2020 Postsecondary Enrollment and Progress



Lake Travis High School

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Count of Class 2020 Postsecondary Enrollment and Progress

Total in the Class: 740

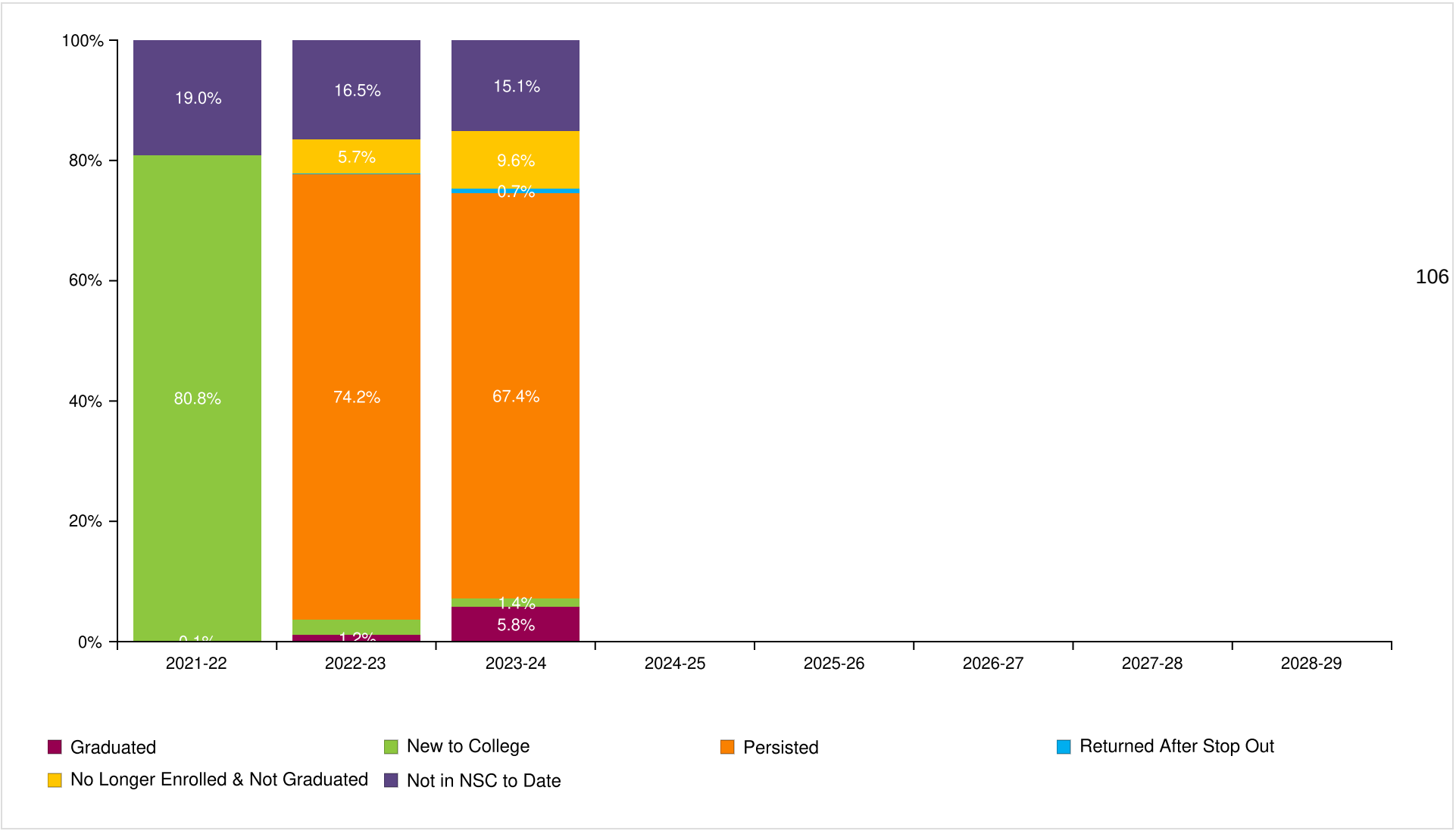
Academic Years	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
New to College	599	18	9	2	0	0	0	0
Persisted	0	538	488	199	0	0	0	0
Returned After Stop Out	0	0	12	11	0	0	0	0
No Longer Enrolled & Not Graduated	0	52	71	87	0	0	0	0
Graduated	2	11	48	331	0	0	0	0
Not in NSC to Date	139	121	112	110	0	0	0	0

105

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Class of 2021 Postsecondary Enrollment and Progress



Lake Travis High School

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Count of Class 2021 Postsecondary Enrollment and Progress

Total in the Class: 814

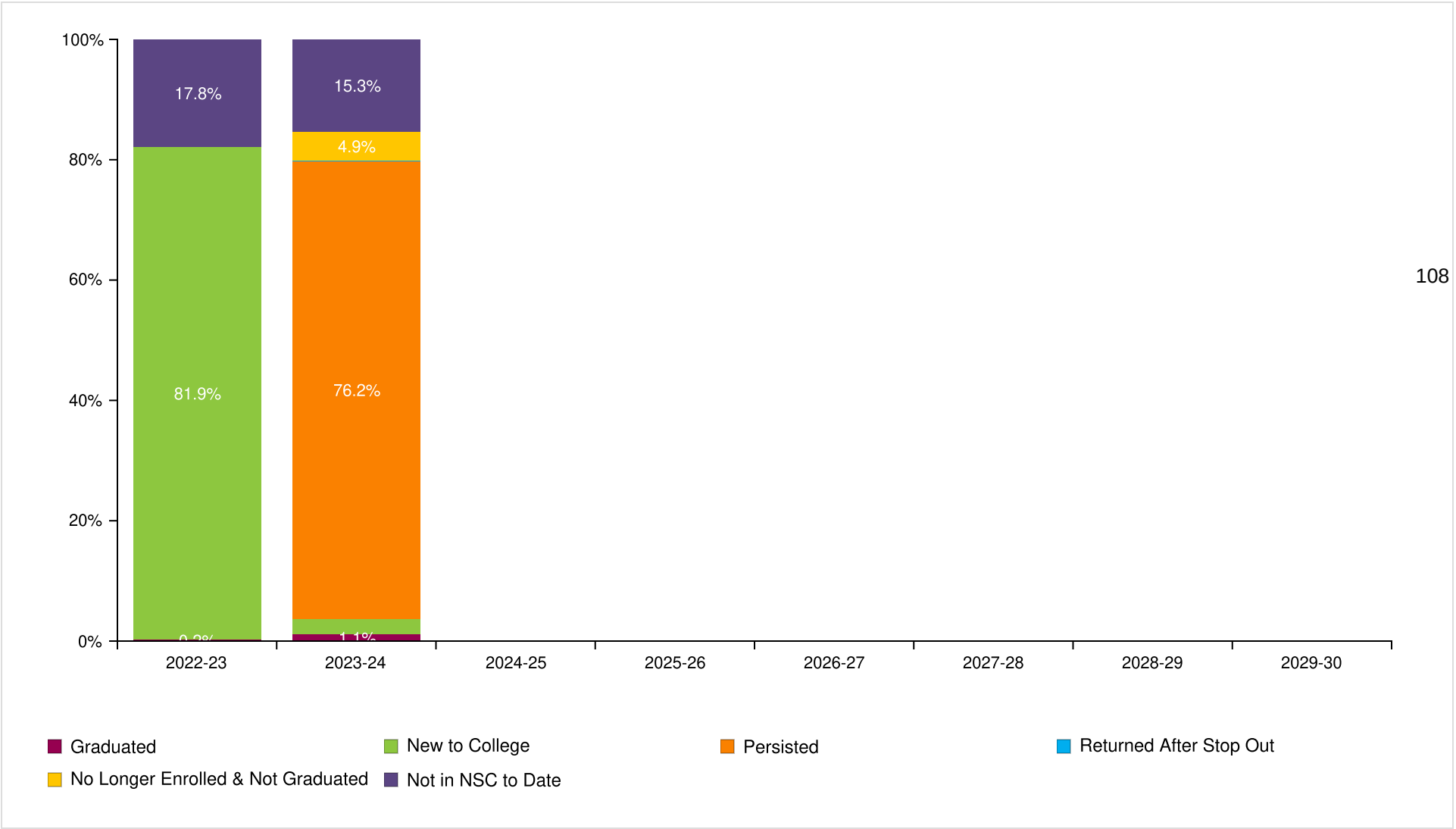
Academic Years	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
New to College	658	20	11	0	0	0	0	0
Persisted	0	604	549	0	0	0	0	0
Returned After Stop Out	0	0	6	0	0	0	0	0
No Longer Enrolled & Not Graduated	0	46	78	0	0	0	0	0
Graduated	1	10	47	0	0	0	0	0
Not in NSC to Date	155	134	123	0	0	0	0	0

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Class of 2022 Postsecondary Enrollment and Progress



Lake Travis High School

Report Run Date: 12/09/2024 11:01 AM

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Count of Class 2022 Postsecondary Enrollment and Progress

Total in the Class: 818

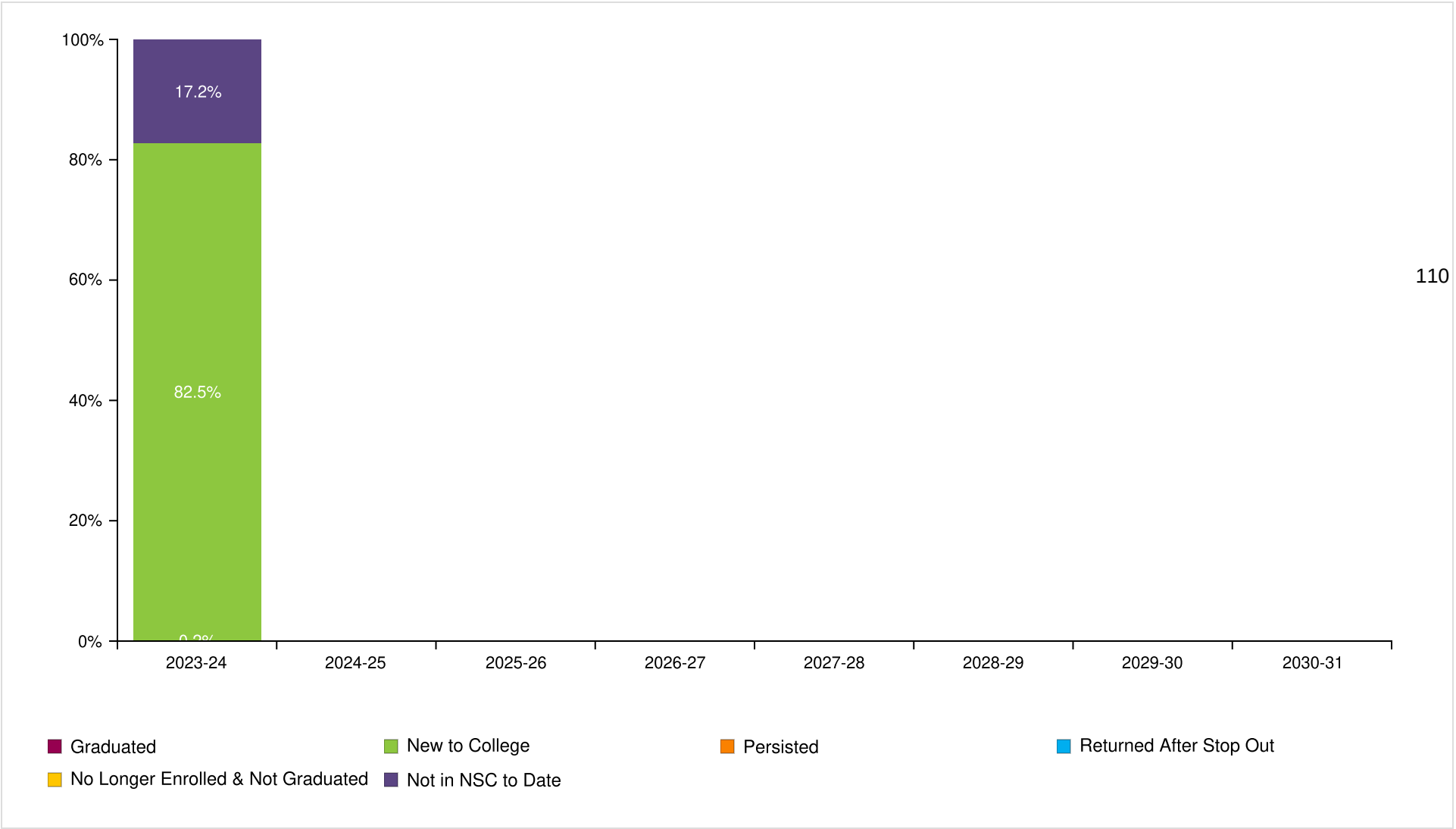
Academic Years	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
New to College	670	21	0	0	0	0	0	0
Persisted	0	623	0	0	0	0	0	0
Returned After Stop Out	0	0	0	0	0	0	0	0
No Longer Enrolled & Not Graduated	0	40	0	0	0	0	0	0
Graduated	2	9	0	0	0	0	0	0
Not in NSC to Date	146	125	0	0	0	0	0	0

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Class of 2023 Postsecondary Enrollment and Progress



Lake Travis High School

Report Run Date: 12/09/2024 11:01 AM

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Count of Class 2023 Postsecondary Enrollment and Progress

Total in the Class: 859

Academic Years	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30	2030-31
New to College	709	0	0	0	0	0	0	0
Persisted	0	0	0	0	0	0	0	0
Returned After Stop Out	0	0	0	0	0	0	0	0
No Longer Enrolled & Not Graduated	0	0	0	0	0	0	0	0
Graduated	2	0	0	0	0	0	0	0
Not in NSC to Date	148	0	0	0	0	0	0	0

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Most Common Institutions of Enrollment in the Fall Immediately following High School Graduation for All Classes by Number of Students

Name	Rank	State	Level	Type	Total
AUSTIN COMMUNITY COLLEGE DISTRICT	1	TX	2-year	Public	500
UNIVERSITY OF TEXAS AT AUSTIN	2	TX	4-year	Public	445
TEXAS A&M UNIVERSITY	3	TX	4-year	Public	413
TEXAS STATE UNIVERSITY - SAN MARCOS	4	TX	4-year	Public	333
TEXAS TECH UNIVERSITY, LUBBOCK	5	TX	4-year	Public	221
UNIVERSITY OF ARKANSAS AT FAYETTEVILLE	6	AR	4-year	Public	212
UNIVERSITY OF TEXAS - SAN ANTONIO	7	TX	4-year	Public	183
BAYLOR UNIVERSITY	8	TX	4-year	Private	123
UNIVERSITY OF TEXAS AT DALLAS	9	TX	4-year	Public	118
BLINN COLLEGE- BRYAN CAMPUS	10	TX	2-year	Public	98
TEXAS CHRISTIAN UNIVERSITY	11	TX	4-year	Private	86
UNIVERSITY OF NORTH TEXAS	12	TX	4-year	Public	80
UNIVERSITY OF OKLAHOMA	13	OK	4-year	Public	63
TEXAS A&M UNIVERSITY - CORPUS CHRISTI	14	TX	4-year	Public	51
UNIVERSITY OF ALABAMA	15	AL	4-year	Public	48
LOUISIANA STATE UNIVERSITY - AG	16	LA	4-year	Public	47
UNIVERSITY OF MISSISSIPPI	17	MS	4-year	Public	44
UNIVERSITY OF TEXAS ARLINGTON	18	TX	4-year	Public	44
UNIVERSITY OF COLORADO BOULDER	19	CO	4-year	Public	40
ST EDWARDS UNIVERSITY	20	TX	4-year	Private	39
BRIGHAM YOUNG UNIVERSITY	21	UT	4-year	Private	34
COLORADO STATE UNIVERSITY	22	CO	4-year	Public	31
TEXAS A&M UNIVERSITY - GALVESTON	23	TX	4-year	Public	31
ARIZONA STATE UNIVERSITY	24	AZ	4-year	Public	30
UNIVERSITY OF HOUSTON	25	TX	4-year	Public	27

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Appendix

Graphs (in order of appearance)		Description
Percent of Students Enrolled in College the Fall Immediately Following Graduation From High School (pp. 2-5)		Percentage of high school students who enrolled in a two- or four- year postsecondary institution in the fall semester immediately following graduation. The fall semester immediately following graduation is defined as any college enrollment between August 15 and October 31. The student must have an active enrollment between these dates.Shown only for classes which have completed a fall semester.
Percent of Students Enrolled in College at Any Time During the First Year After High School (pp. 7-10)		Percentage of high school students who enrolled in a two- or four-year postsecondary institution in the academic year immediately following graduation. The first year after high school includes any college enrollment any college enrollment where a studen between August 15 of the graduation calendar year and August 14 of the following yeart had active enrollment between August 15 of the graduation calendar year and August 14 of the following calendar year.*
Percent of Students Enrolled in College at Any Time During the First Two Years After High School (pp. 12-15)		Percentage of high school students who enrolled in a two- or four-year postsecondary institution in the academic year immediately following graduation. The two years after high school includes any college enrollment where student had active enrollment between August 15 of the graduation calendar year and August 14 of the following two calendar years.*
Percent of Students Enrolled in College the First year After High School Who Returned for a Second Year (pp. 17-20)		Percentage of students who remained enrolled (persisted) in postsecondary education from the first year to the second year. Note: The graphs show the percentage of students who remained enrolled at any postsecondary institution, not retention at the same institution. Shown only for classes which have completed the first two years after high school.
Percent of High School Class with a College Degree Within Six Years (pp. 22-25)		The six-year degree completion rate at two- and four- year institutions. Shown only for classes where six academic years have passed since high school graduation.When student has a degree with an award date that is more than 6 years after high school year,it will not be counted in this report; it will be reported in the student-level Detail Report. Only associate's, bachelor's, and advanced degrees are counted in these rates. Certificates are not included in these counts but will be reported in the student-level Detail Report.
Time to College Graduation Within Six Years (p. 27)		This graph shows the time to first degree broken down by the number of academic years since the students graduated from high school.
Class of XXXX Postsecondary Enrollment and Progress (each class year is on its own page)		Progress of a single class of students (cohort) through postsecondary education up to eight years after high school graduation. Each segment of the bar chart corresponds to one of the following definitions: GRADUATED: Student has completed an associate's, bachelor's or higher degree (certificates are not included). Once a student is counted as a graduate,s/he is not counted again elsewhere in the report. A Graduated Record is reported before all other possible categories (e.g. New to College,Persisted, etc.) NEW TO COLLEGE: First year that a student was found in the Clearinghouse database. PERSISTED: Student was enrolled during the previous year and continues to be enrolled in the current year. The graphs show the student's continued enrollment at any postsecondary institution, not retention at the same institution. RETURNED AFTER STOP OUT: Student was enrolled, did not appear in postsecondary education the following year, and reappeared in a year thereafter. NO LONGER ENROLLED & NOT GRADUATED: Student was enrolled in postsecondary education, is not currently enrolled and there is no record of completion. NOT IN NSC TO DATE: Student was not found in the Clearinghouse database.**

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Most Common Institutions of Enrollment in the Fall Immediately Following Graduation from High School for All Classes by Number of Students	A comprehensive list of top 25 most frequentlly attended the postsecondary institutions your students attended in the first fall following high school graduation.

Term	Definition
Effective Date	Set by Clearinghouse's Research Center three times per year - Fall, Spring and Summer. The date will be noted in the Report File Name and within the StudentTracker application.The date is established to ensure that your StudentTracker reports provide the most comprehensive enrollment and degree data provided by the colleges and universities for a given period, and that all secondary education institutions are matched against the same set of post-secondary data.Reports generated in between effective dates will be processed against the most recent effective date, no new data will be reported.
High School Class (labeled by graduation year)	Includes all students who graduated high school between September 1 of the previous year and August 31 of the graduation calendar year.
Academic Year	Defined as any collegiate enrollment that occurs between August 15 of one year and August 14 of the following calendar year.
Institutional Level	Indicates the level of degree predominantly offered by the institution (i.e. two-year or four-year).
Institutional Type	Indicates whether the institution is controlled publically or by a private entity.
Institutional Location	Indicates if an institution is in-state or out-of-state based on the comparison between the states where the institution and the high school are located.
Demographic Packet	A packet of reports for many of the same outcomes described above but stratified by the Demographic data elements you provided in your Diploma or Request file, if any.The Demographic data elements are: Gender,Ethnicity,Economic Disadvantage indicator,Disability indicator,English Language Learner.
Academic Packet	A packet of reports for many of the same outcomes described above but stratified by the Academic data elements you provided in your Diploma or Request file, if any.The Academic data elements are: Math Assessment 8th grade and high school,English Assessment 8th grade and high school,Dual Enrollment indicator and Number of Semester of Match completed.

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*Revised in Spring 2016 to display the recent high school class even though the full time period has not elapsed
**Institutions that participate in the Clearinghouse represent more that 98% of the nation's two- and four-year postsecondary enrollment.Students who are enrolled in postsecondary institutions that do not participate in the Clearinghouse are not in the Clearinhouse database.

NATIONAL STUDENT CLEARINGHOUSE

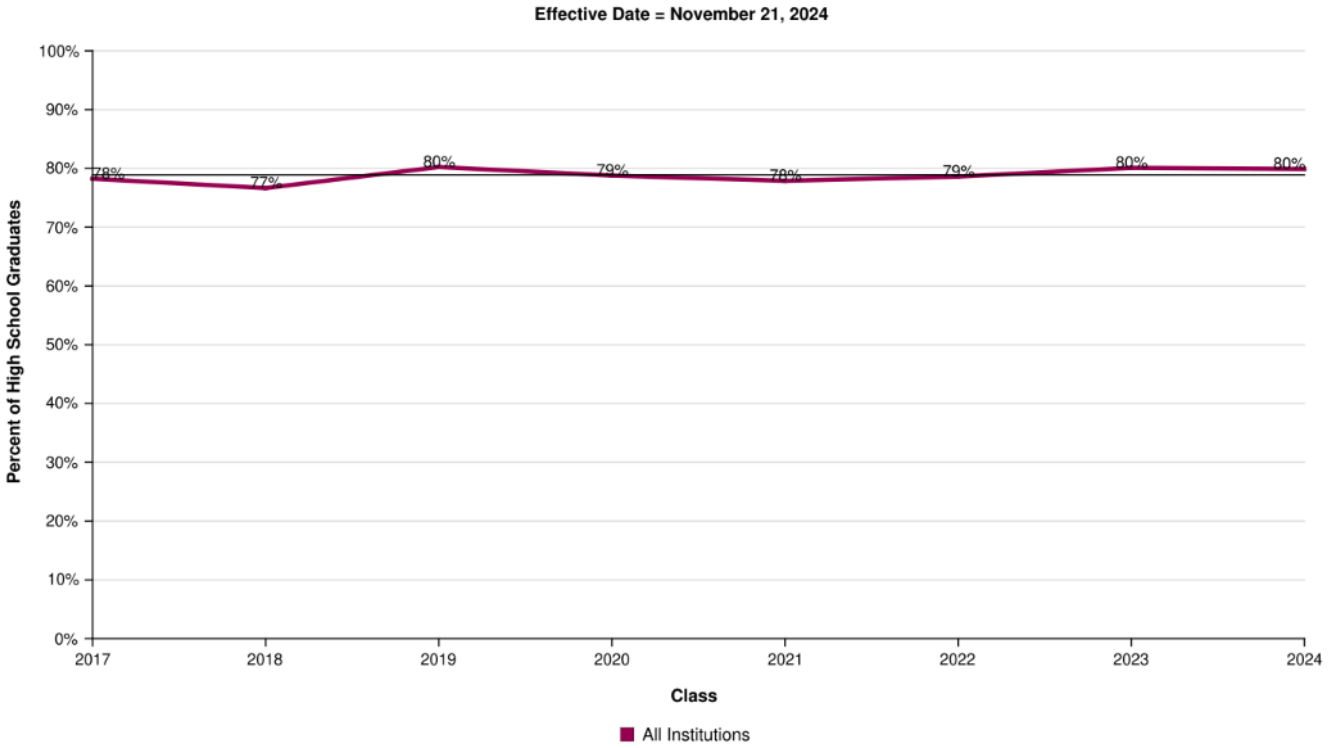
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Strategic Plan Update

National Student Clearinghouse Report

February 19, 2025

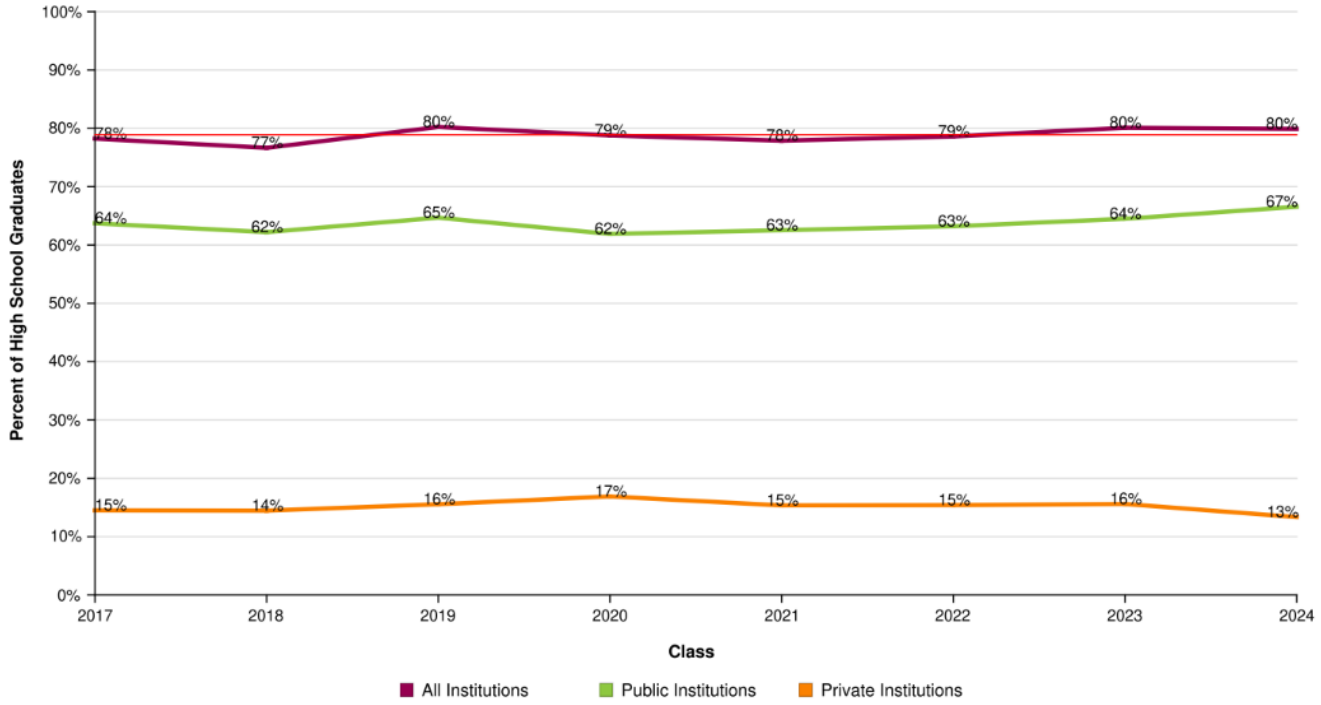
Percent of Students Enrolled in College the Fall Immediately After High School



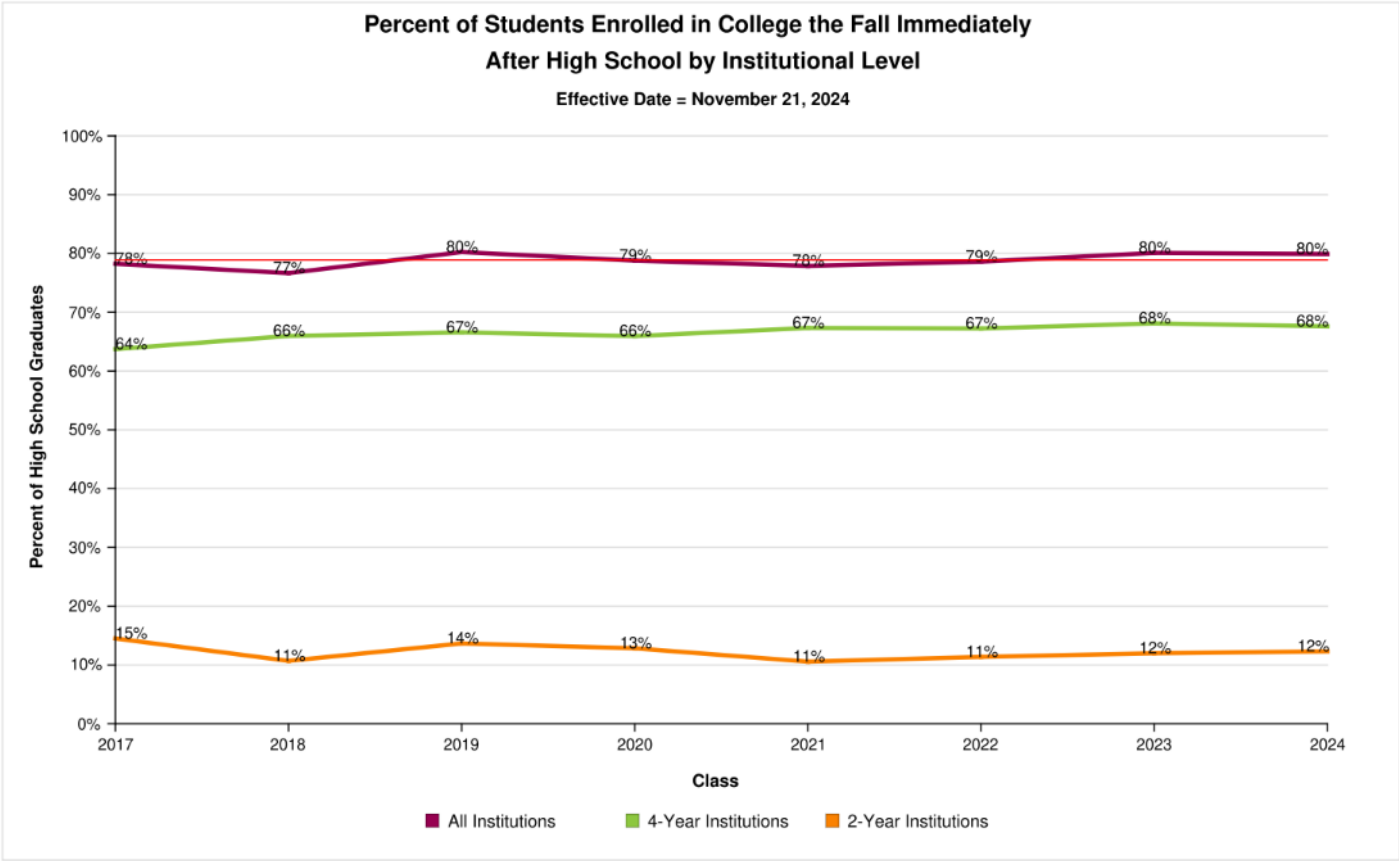
AVG = 79%

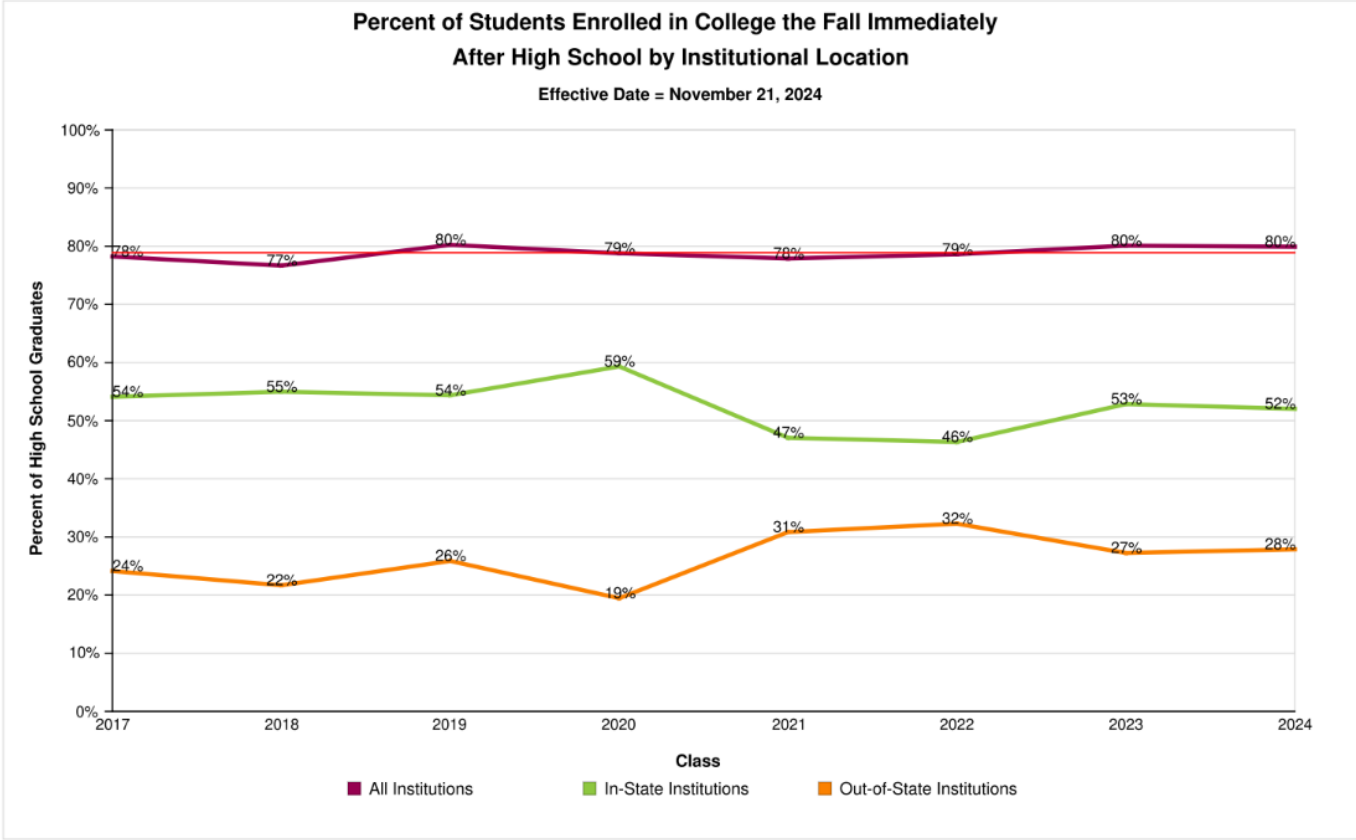
Percent of Students Enrolled in College the Fall Immediately After High School by Institutional Type

Effective Date = November 21, 2024



AVG = 79%


Percent of Students Enrolled in College the Fall Immediately After High School by Institutional Level
Effective Date = November 21, 2024
Percent of High School Graduates
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
78%
77%
80%
79%
78%
79%
80%
80%
64%
66%
67%
66%
67%
67%
68%
68%
15%
11%
14%
13%
11%
11%
12%
12%
2017
2018
2019
2020
2021
2022
2023
2024
Class
All Institutions
4-Year Institutions
2-Year Institutions
AVG = 79%

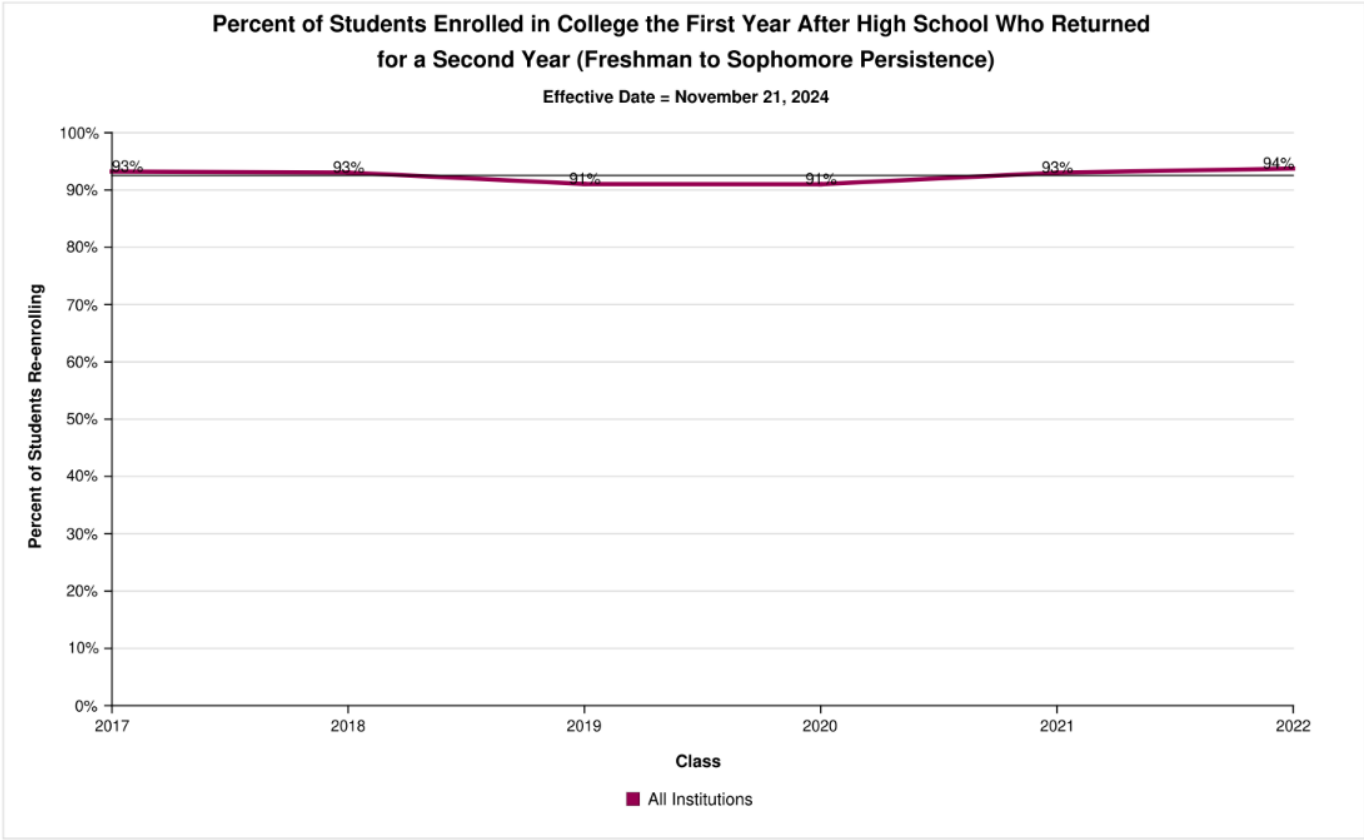

Percent of Students Enrolled in College the Fall Immediately
After High School by Institutional Location
Effective Date = November 21, 2024
Percent of High School Graduates
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
78%
77%
80%
79%
78%
79%
80%
80%
54%
55%
54%
59%
47%
46%
53%
52%
24%
22%
26%
19%
31%
32%
27%
28%
2017
2018
2019
2020
2021
2022
2023
2024
Class
All Institutions
In-State Institutions
Out-of-State Institutions
AVG = 79%

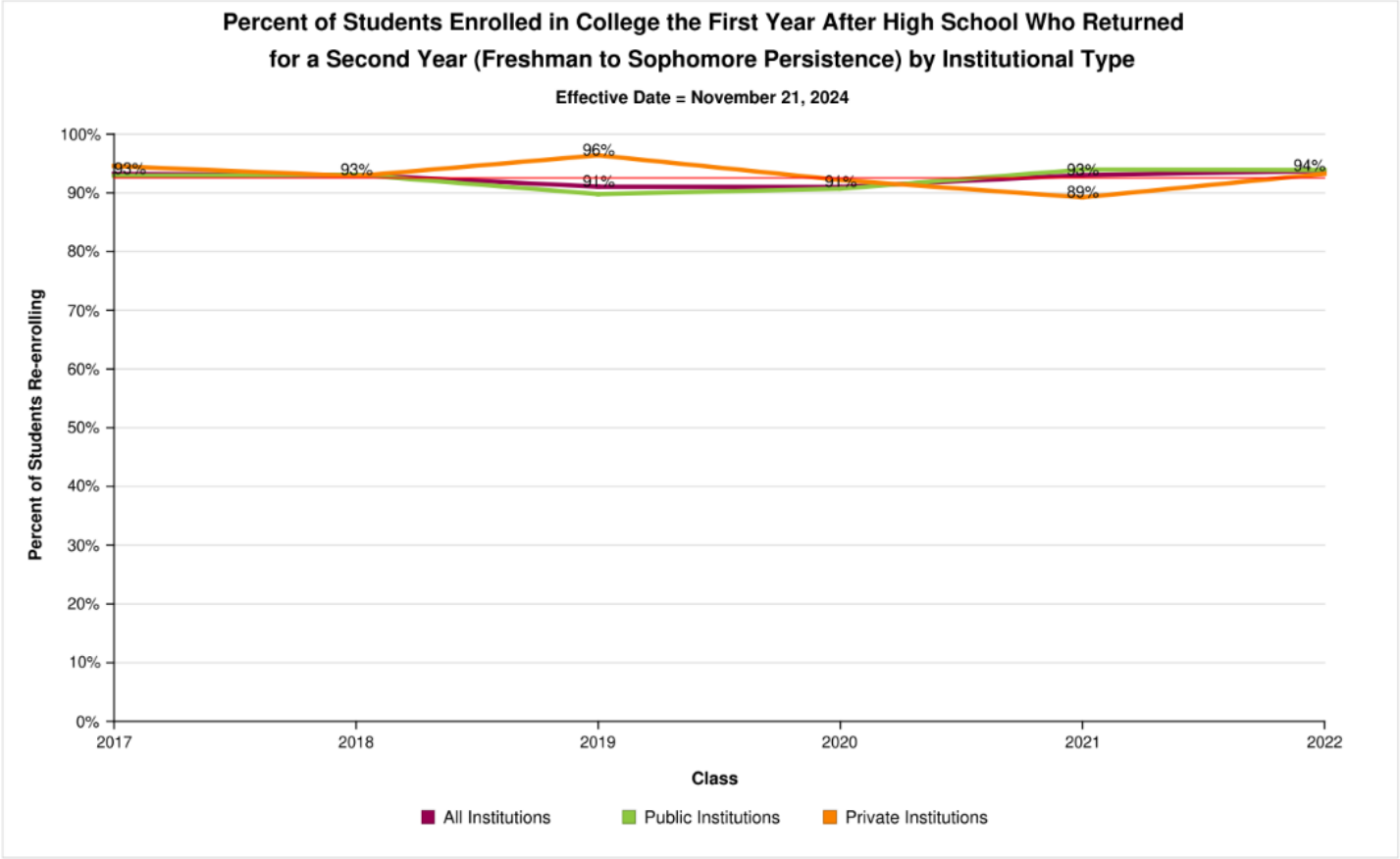
Average Percent of LTISD Students Enrolled in College (2017-2024)

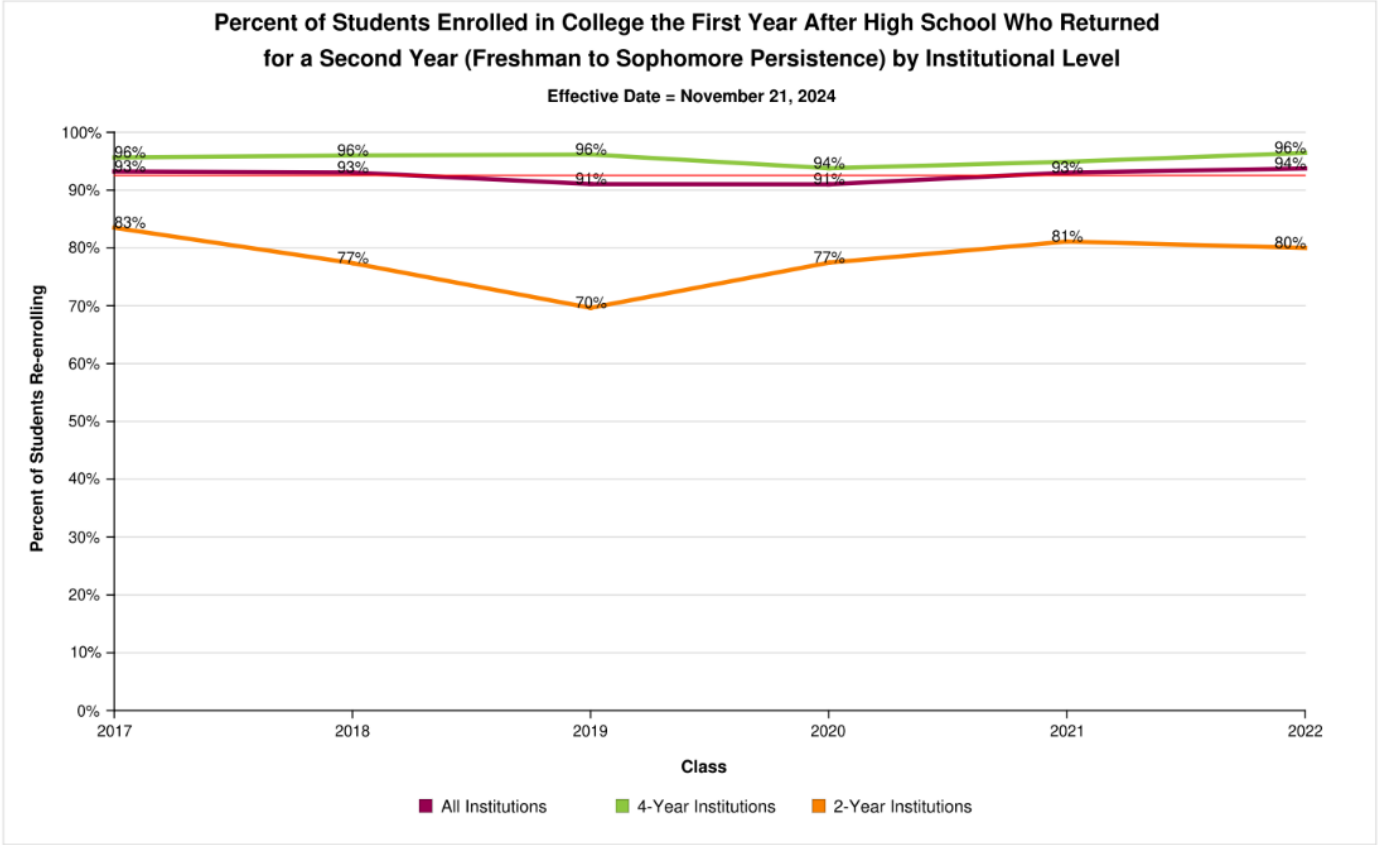
- Fall Semester Immediately After High School = 79%
- At Any Time During the First Year After High School = 82%
- At Any Time During the First Two Years After High School = 85%

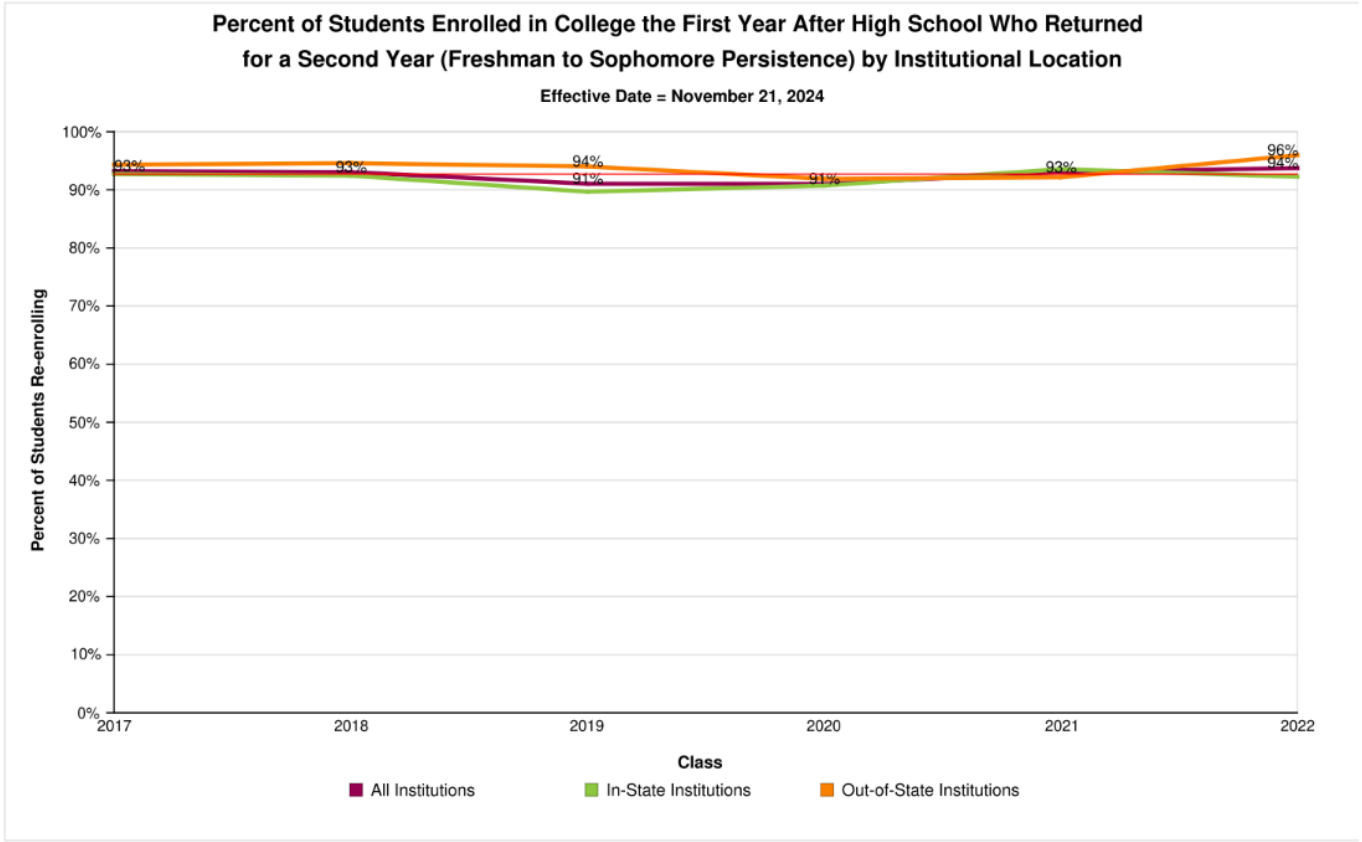
Central Texas Average First Year After High School = 45%

Texas Average First Year After High School = 47%


Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence)
Effective Date = November 21, 2024
Percent of Students Re-enrolling
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
93%
93%
91%
91%
93%
94%
2017
2018
2019
2020
2021
2022
Class
All Institutions

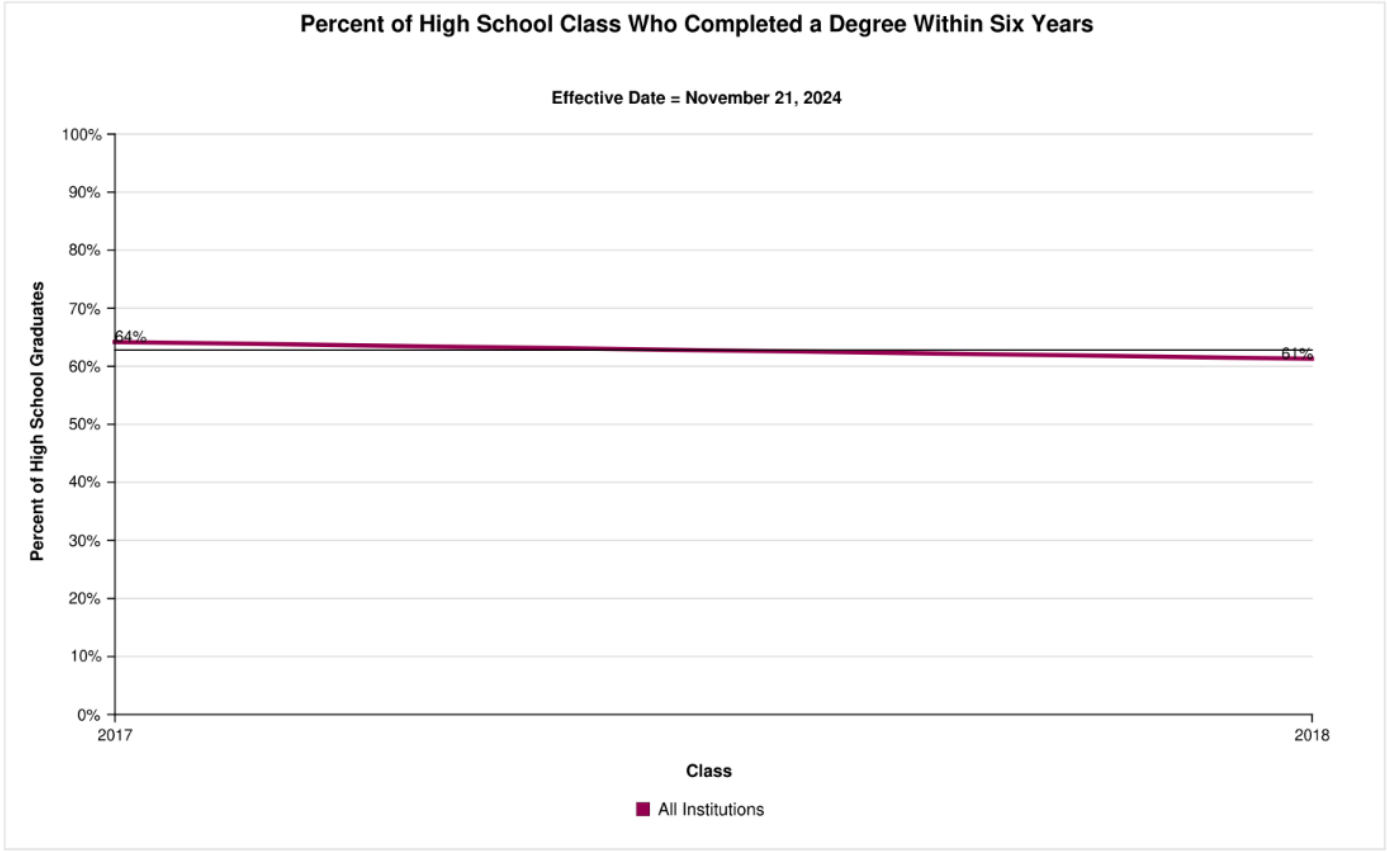

Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence) by Institutional Type
Effective Date = November 21, 2024
Percent of Students Re-enrolling
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
93%
93%
96%
91%
91%
93%
89%
94%
2017
2018
2019
2020
2021
2022
Class
All Institutions
Public Institutions
Private Institutions

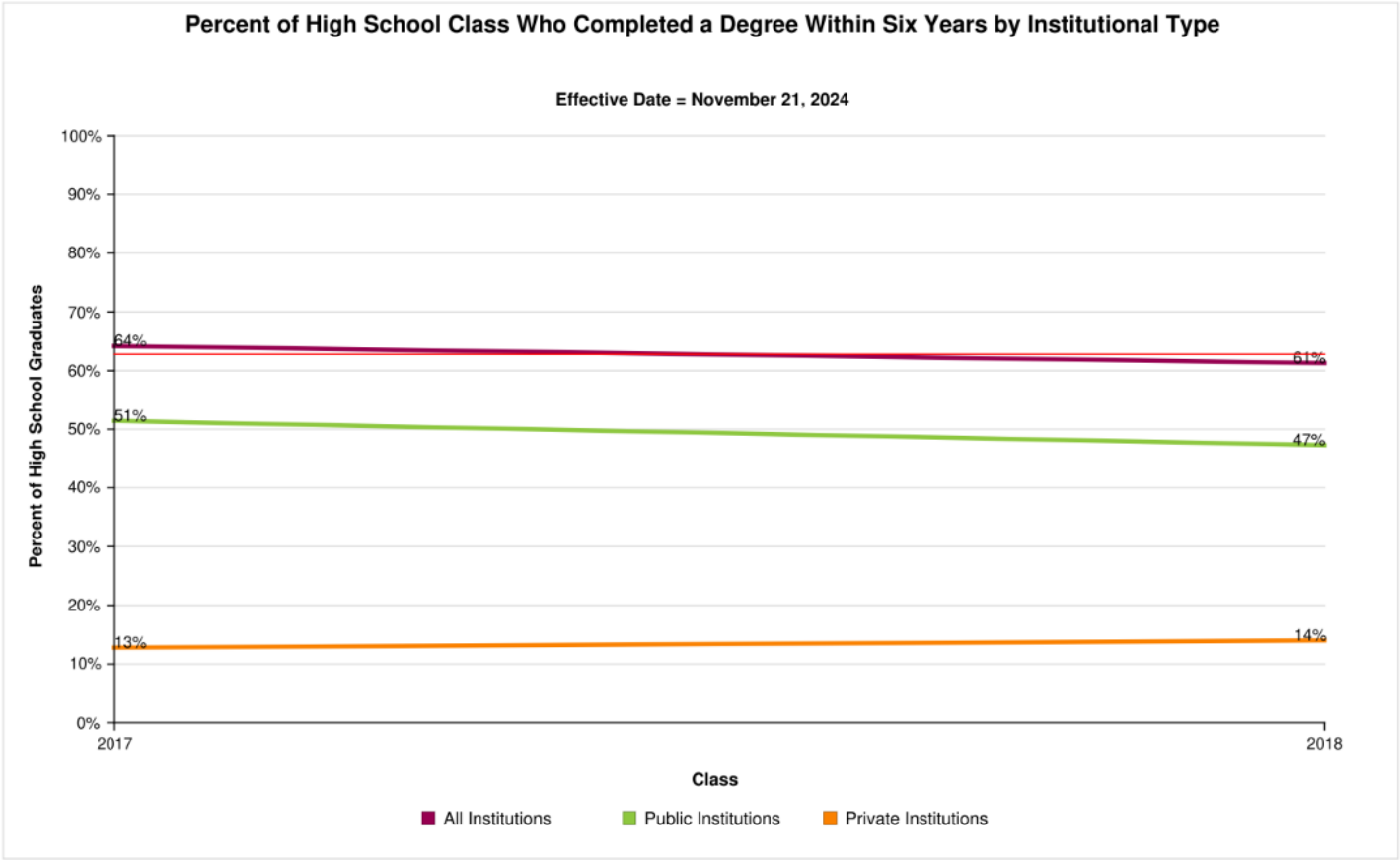

Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence) by Institutional Level
Effective Date = November 21, 2024
Percent of Students Re-enrolling
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
96%
96%
96%
94%
96%
93%
93%
91%
91%
93%
94%
83%
77%
70%
77%
81%
80%
2017
2018
2019
2020
2021
2022
Class
All Institutions
4-Year Institutions
2-Year Institutions

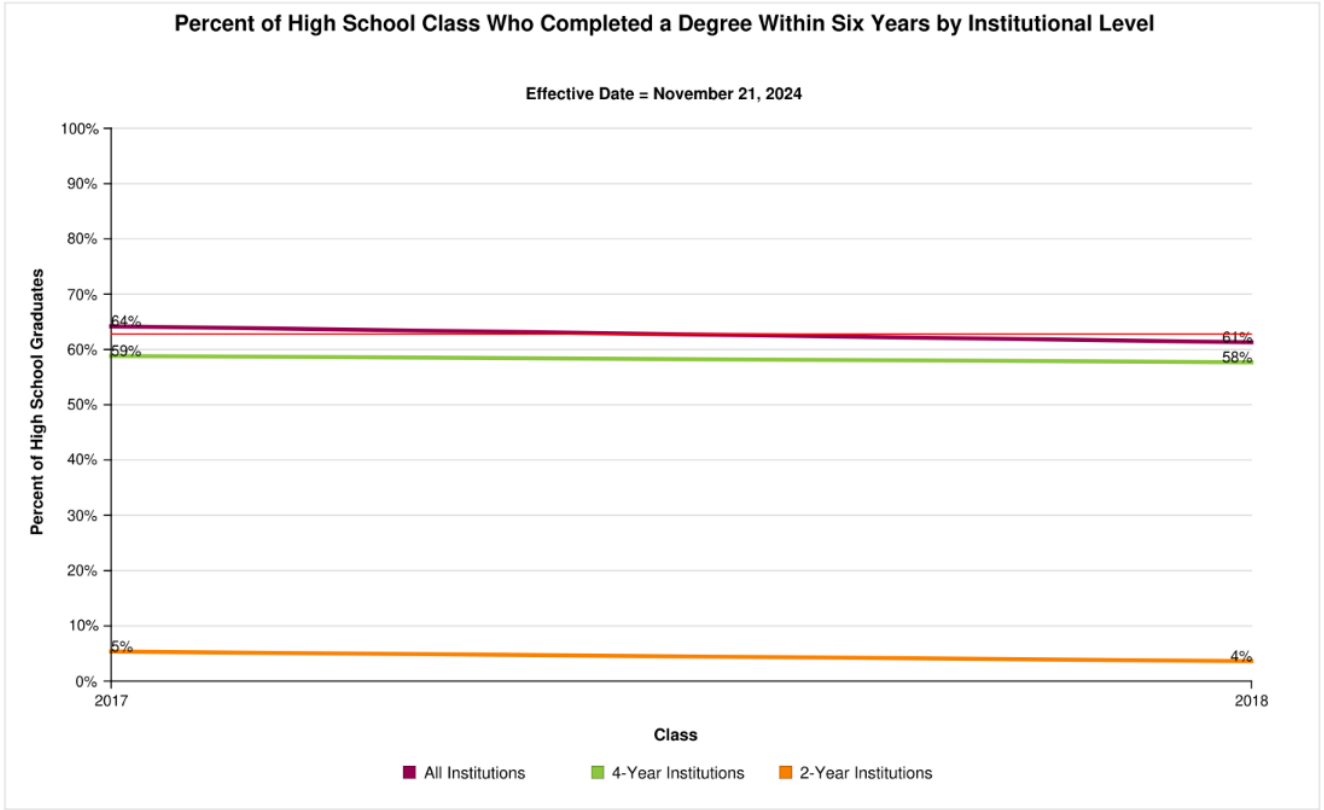

Percent of Students Enrolled in College the First Year After High School Who Returned for a Second Year (Freshman to Sophomore Persistence) by Institutional Location
Effective Date = November 21, 2024
Percent of Students Re-enrolling
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
93%
93%
94%
91%
91%
93%
96%
94%
2017
2018
2019
2020
2021
2022
Class
All Institutions
In-State Institutions
Out-of-State Institutions

Average Percent of LTISD Students Enrolled in College (2017-2024)

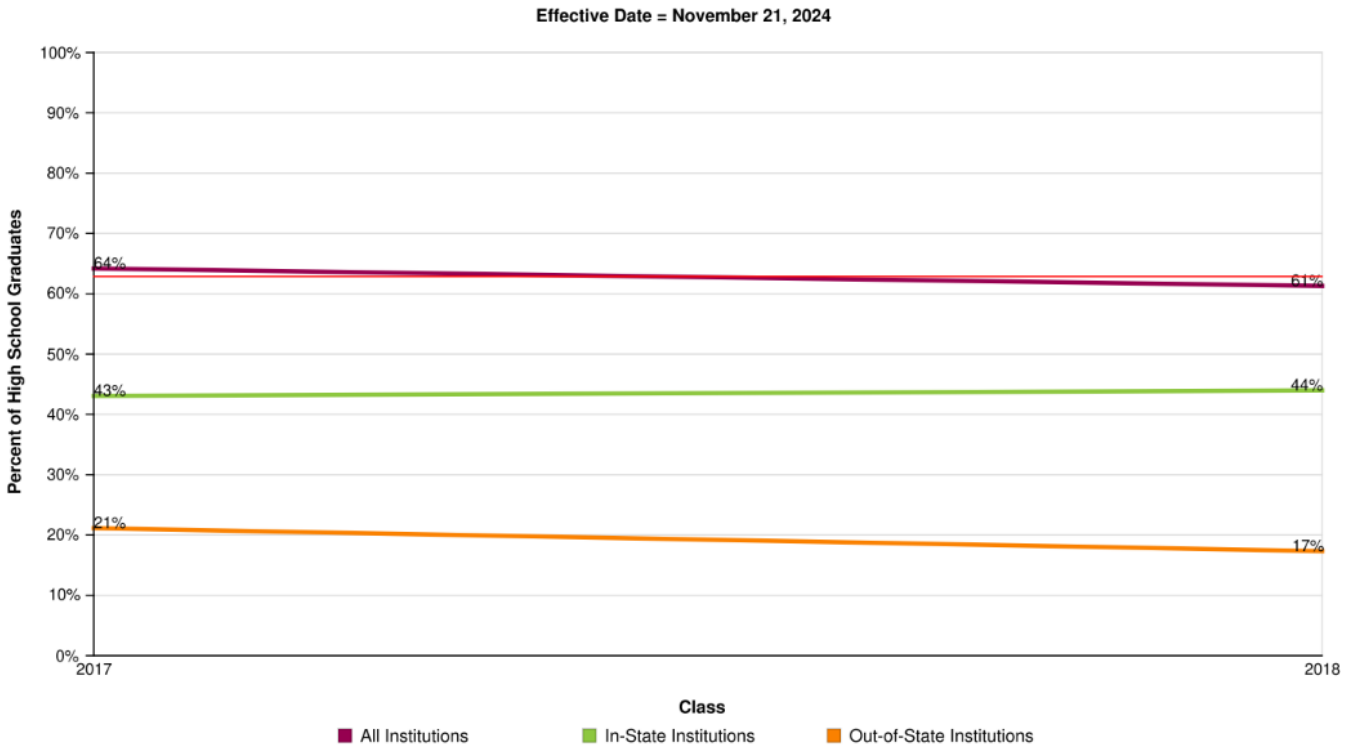
- **First Year After High School Who Returned for a Second Year = 93%**


Percent of High School Class Who Completed a Degree Within Six Years
Effective Date = November 21, 2024
Percent of High School Graduates
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
64%
61%
2017
2018
Class
All Institutions


Percent of High School Class Who Completed a Degree Within Six Years by Institutional Type
Effective Date = November 21, 2024
Percent of High School Graduates
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
64%
61%
51%
47%
13%
14%
2017
2018
Class
All Institutions
Public Institutions
Private Institutions


Percent of High School Class Who Completed a Degree Within Six Years by Institutional Level
Effective Date = November 21, 2024
Percent of High School Graduates
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
64%
61%
59%
58%
5%
4%
2017
2018
Class
All Institutions
4-Year Institutions
2-Year Institutions

Percent of High School Class Who Completed a Degree Within Six Years by Institutional Location



Percent of High School Class (2017-2018)

- **Who Completed a Degree Within Six Years = 63%**

Most Common Institutions of Enrollment in the Fall Immediately following High School Graduation for All Classes by Number of Students

Name	Rank	State	Level	Type	Total
AUSTIN COMMUNITY COLLEGE DISTRICT	1	TX	2-year	Public	500
UNIVERSITY OF TEXAS AT AUSTIN	2	TX	4-year	Public	445
TEXAS A&M UNIVERSITY	3	TX	4-year	Public	413
TEXAS STATE UNIVERSITY - SAN MARCOS	4	TX	4-year	Public	333
TEXAS TECH UNIVERSITY, LUBBOCK	5	TX	4-year	Public	221
UNIVERSITY OF ARKANSAS AT FAYETTEVILLE	6	AR	4-year	Public	212
UNIVERSITY OF TEXAS - SAN ANTONIO	7	TX	4-year	Public	183
BAYLOR UNIVERSITY	8	TX	4-year	Private	123
UNIVERSITY OF TEXAS AT DALLAS	9	TX	4-year	Public	118
BLINN COLLEGE- BRYAN CAMPUS	10	TX	2-year	Public	98
TEXAS CHRISTIAN UNIVERSITY	11	TX	4-year	Private	86
UNIVERSITY OF NORTH TEXAS	12	TX	4-year	Public	80
UNIVERSITY OF OKLAHOMA	13	OK	4-year	Public	63
TEXAS A&M UNIVERSITY - CORPUS CHRISTI	14	TX	4-year	Public	51
UNIVERSITY OF ALABAMA	15	AL	4-year	Public	48
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UNIVERSITY OF MISSISSIPPI	17	MS	4-year	Public	44
UNIVERSITY OF TEXAS ARLINGTON	18	TX	4-year	Public	44
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ST EDWARDS UNIVERSITY	20	TX	4-year	Private	39
BRIGHAM YOUNG UNIVERSITY	21	UT	4-year	Private	34
COLORADO STATE UNIVERSITY	22	CO	4-year	Public	31
TEXAS A&M UNIVERSITY - GALVESTON	23	TX	4-year	Public	31
ARIZONA STATE UNIVERSITY	24	AZ	4-year	Public	30
UNIVERSITY OF HOUSTON	25	TX	4-year	Public	27



Questions?

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Attendance Update

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
The district understands that attendance is key to academic success. To improve this, it has created strategies to address challenges, improve communication with families, and create engaging learning environments. With the help of data and community support, these efforts have made noticeable progress and set the stage for future success. This presentation will outline the district's work to boost student attendance, covering the strategies used, progress made, and ongoing projects. This aligns with the district's commitment to fostering academic success and ensuring equitable access to education for all students.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Betsy Russell - Director of Quality Assurance
Tasha Barker - Assistant Superintendent of Organizational Services

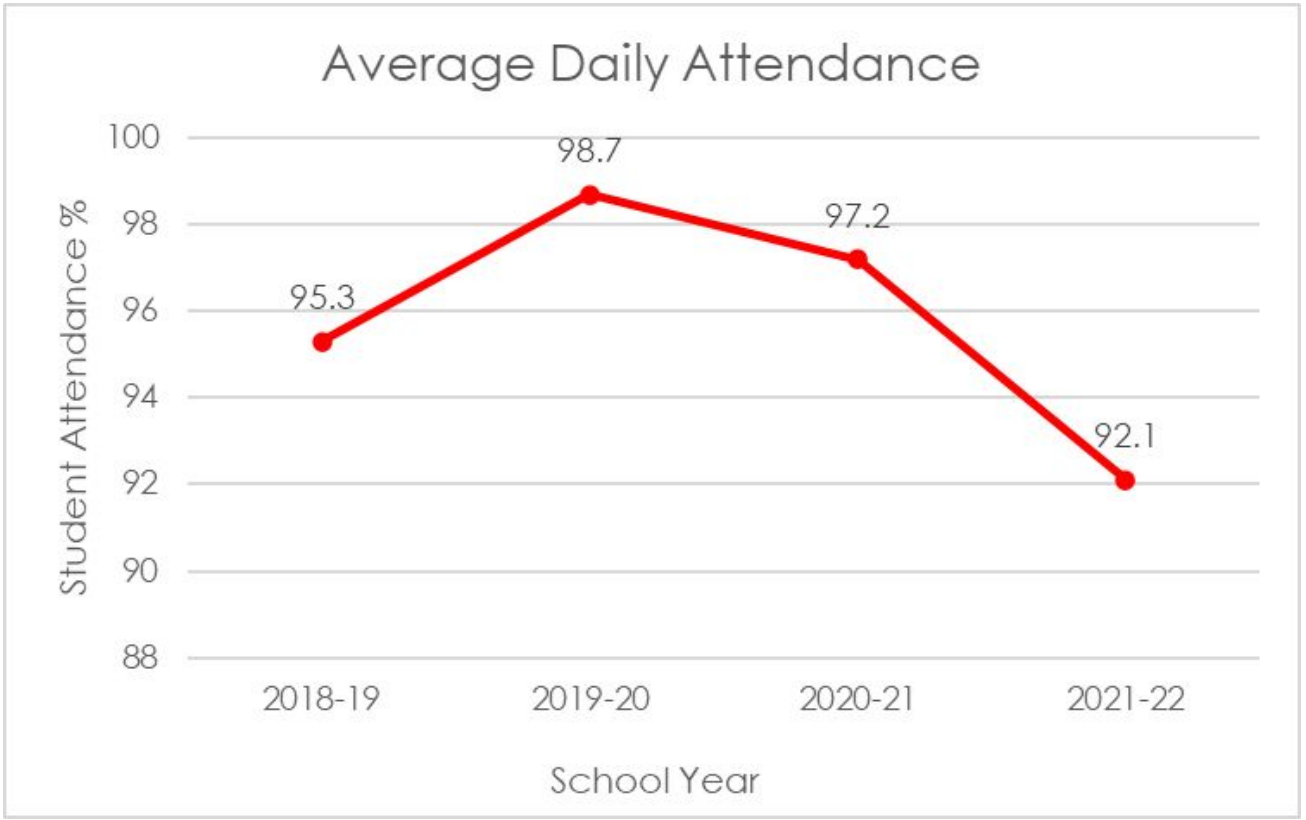
ATTACHMENTS
Attendance Presentation

MEETING DATE
February 19, 2025

Attendance Update

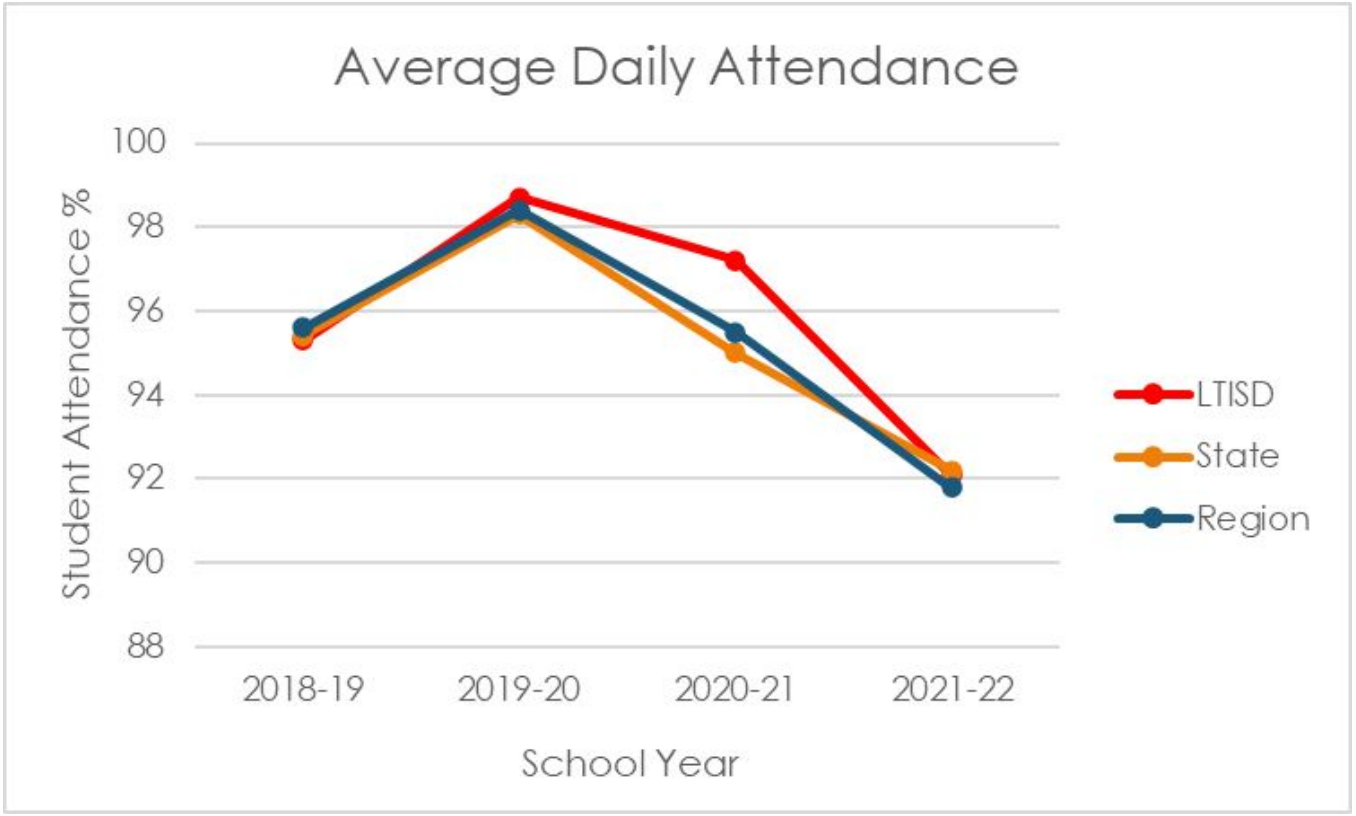
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February 19, 2025



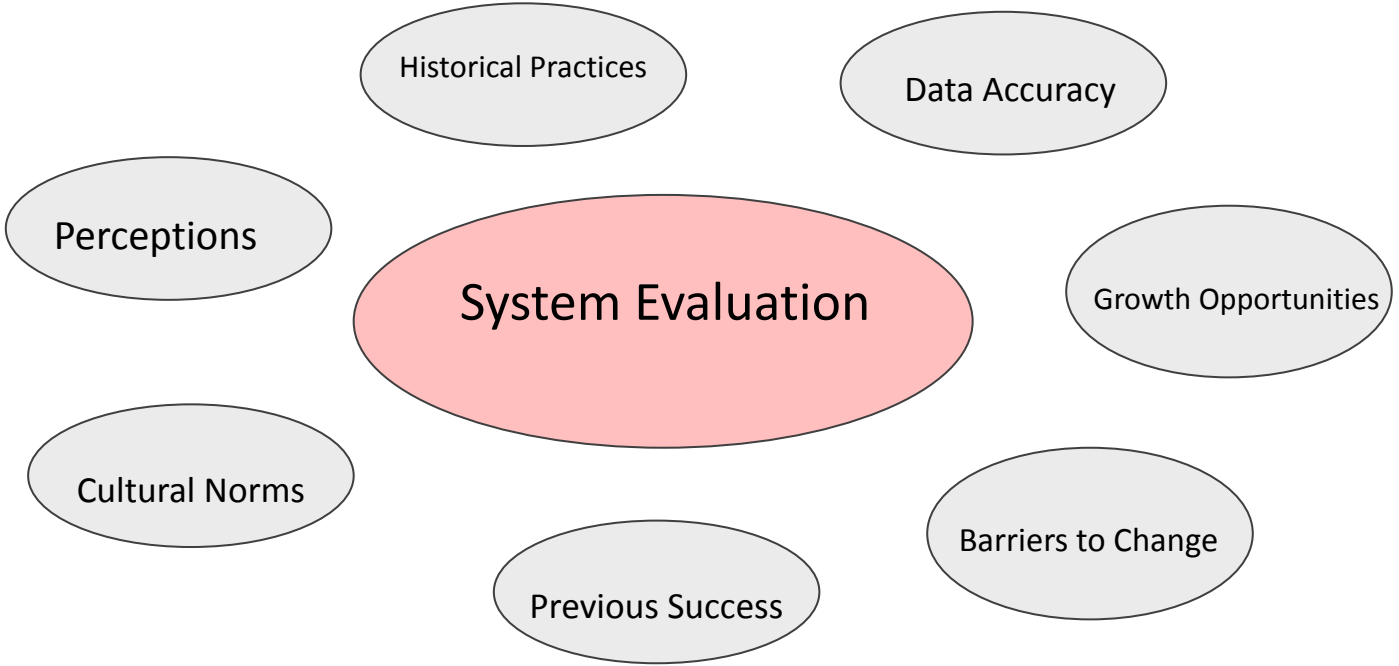
LTISD Historical Data

https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/texas-academic-performance-reports



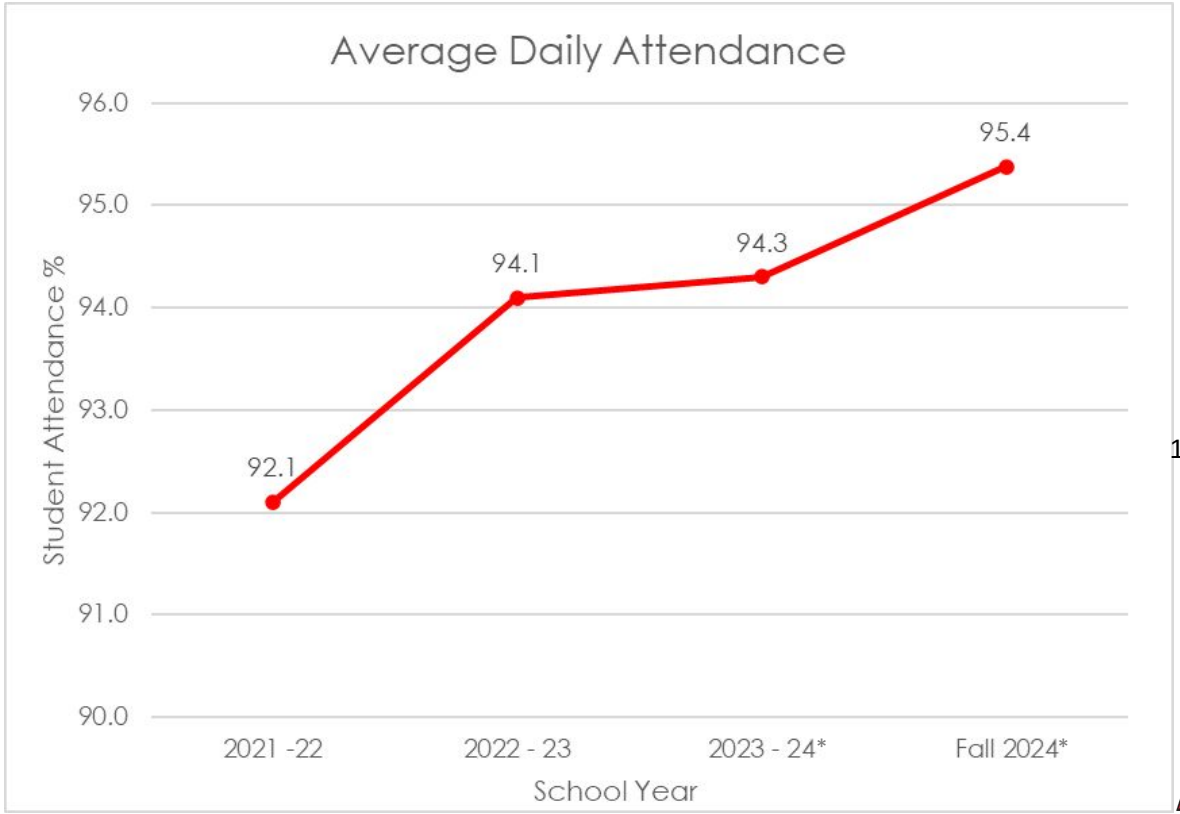
Historical Comparative Data

https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/texas-academic-performance-reports

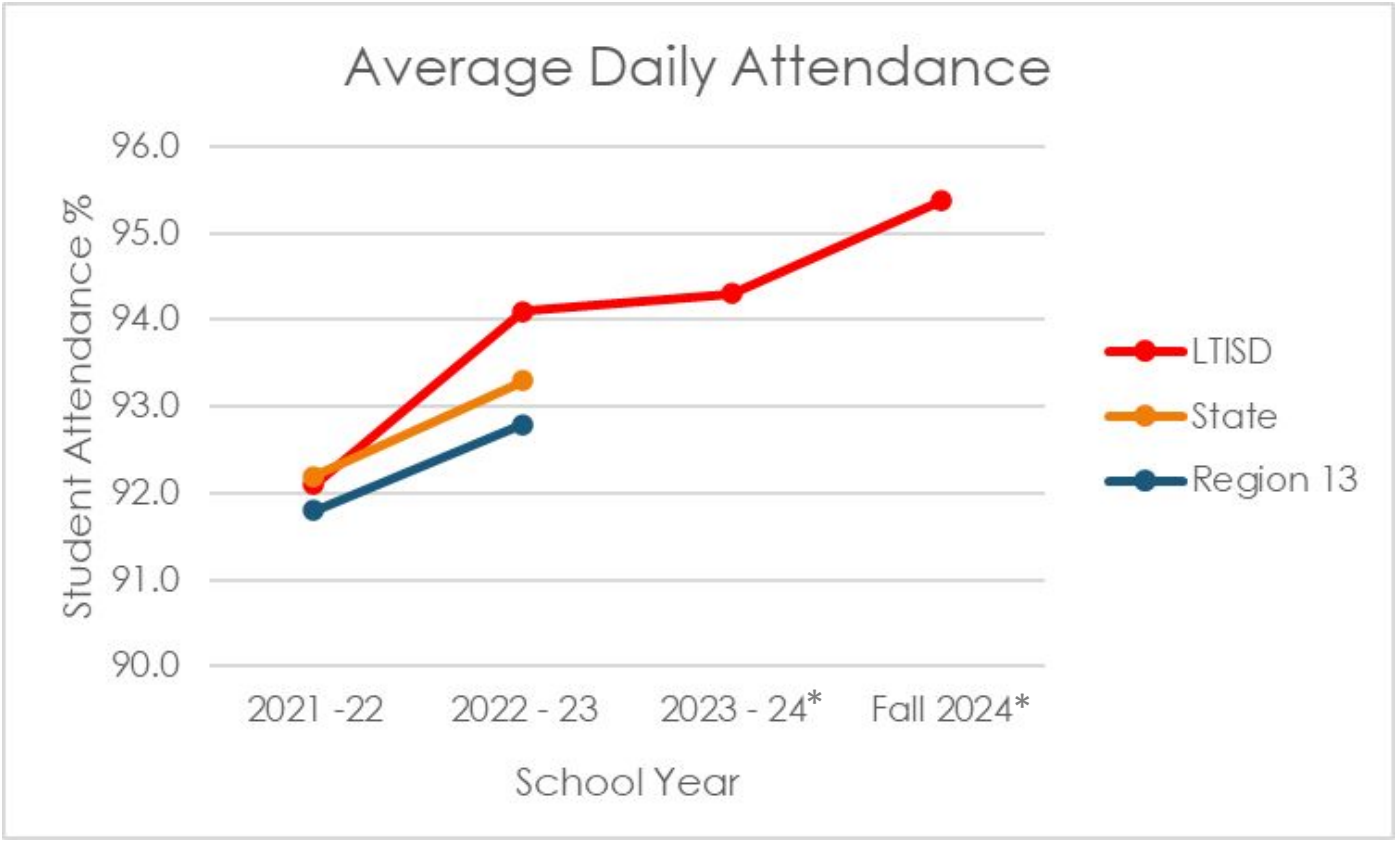


LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

LTISD Current Attendance Trend



https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/texas-academic-performance-reports
*Student Information System

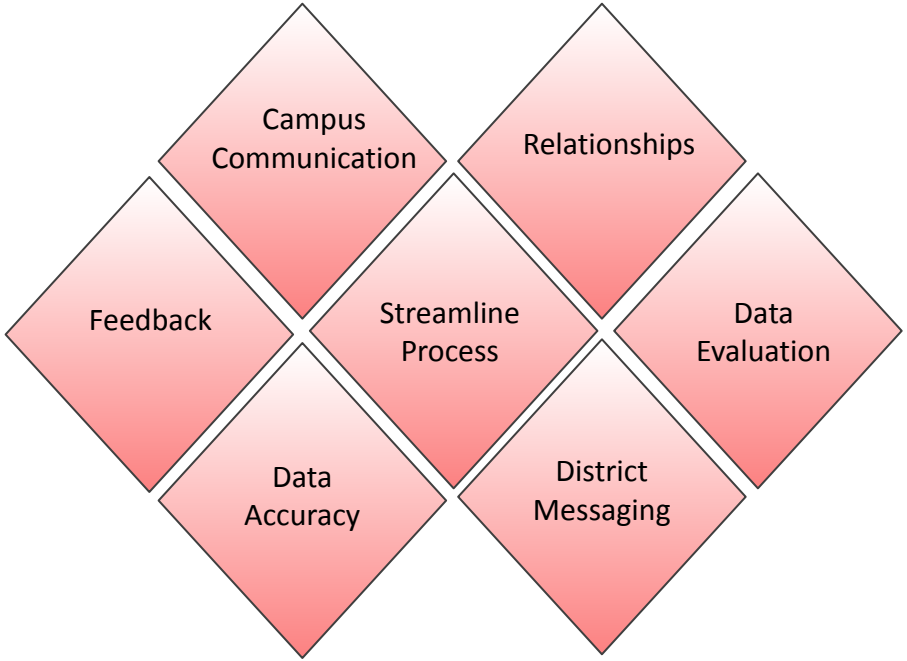


Comparative Data

https://tea.texas.gov/texas-schools/accountability/academic-accountability/performance-reporting/texas-academic-performance-reports

*Student Information System

System Building Areas of Focus

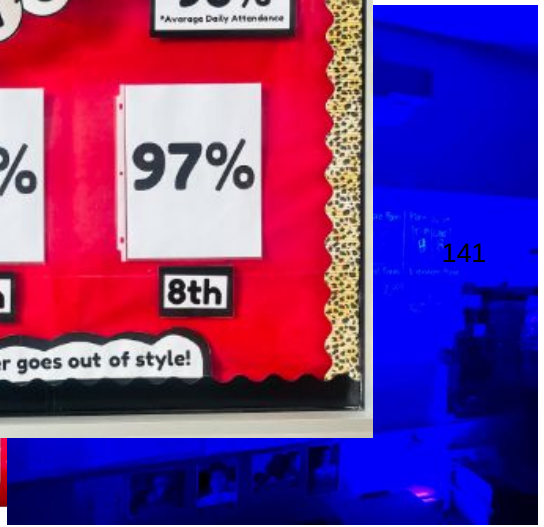


LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

Campus Initiatives







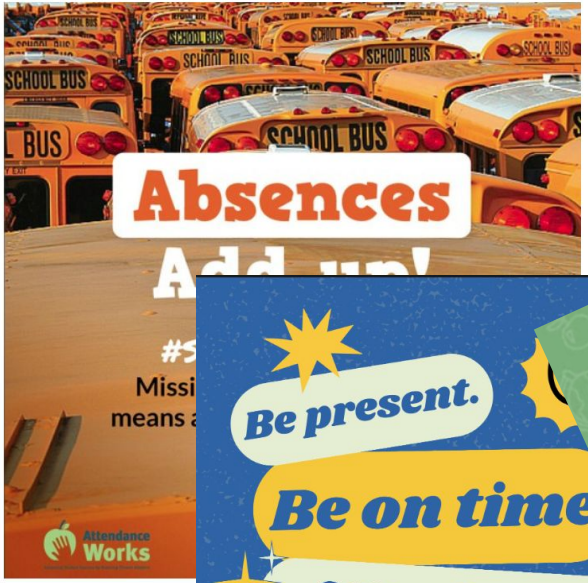
Attendance and Tardies

- It is important to be present in class everyday
- If you are late to class without a pass, will be marked tardy.
- By law, students must attend 90% of each class in order to receive credit. This means, you can only miss **FOUR classes** each semester before you will be required to make-up hours by attending Saturday school.

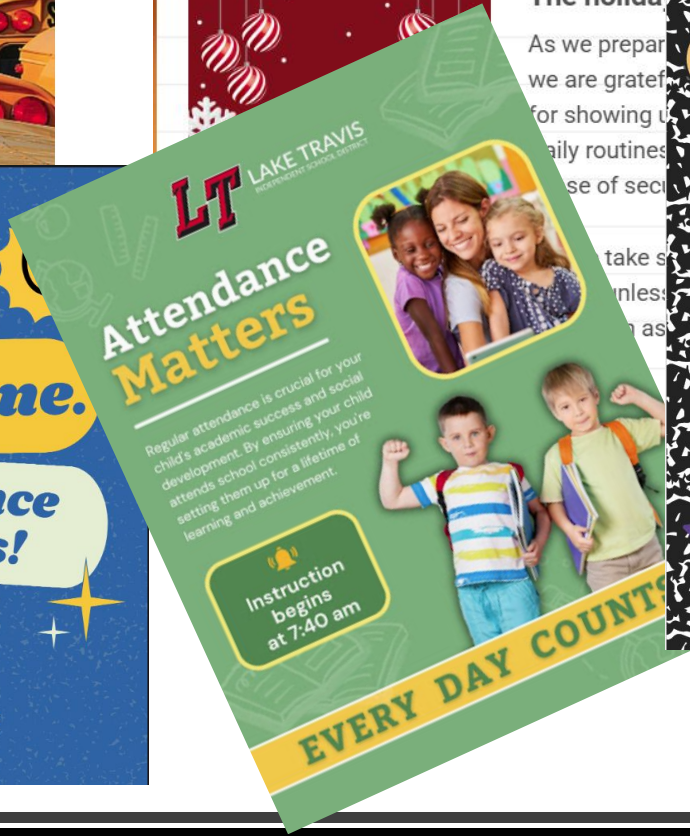
BEE CAVE ELEMENTARY
Parent Teacher Organization

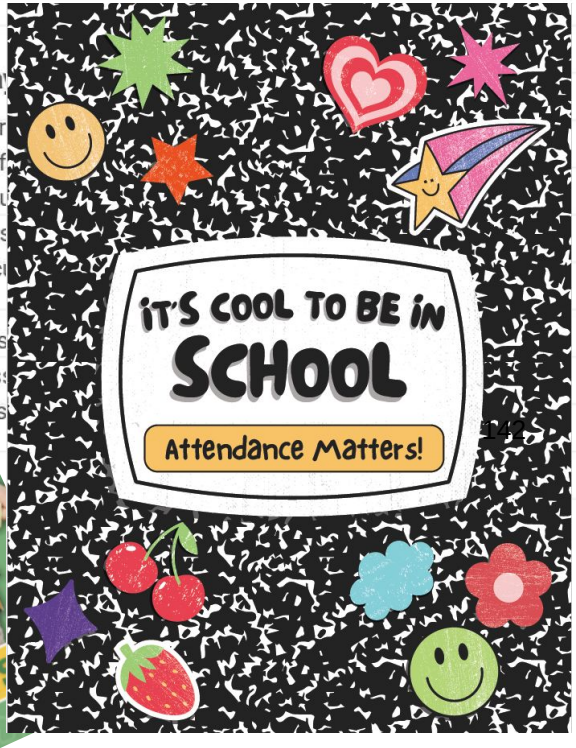
eriod/9 weeks ... the winner is ...
KINDER !!!
NGRATULATIONS !!!
ay, February 3 @ 11am
MUST sign in at the front office first.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT









Did you know?

Does your student miss two days a
absent. Chronic absence is typically
month–for any reason. Studies show
approximately 50%.

At Lake Travis ISD, in 2022, non-chro
their chronically-absent peer group a
science, reading, and social studies.



Questions?

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Competitive Sealed Proposal (CSP) - Reimer's Road Private Drive Project

RECOMMENDED ACTION
For Presentation/Discussion only; action will be requested at the March 26, 2025 Board meeting.

RATIONALE
Per Board Policy CV (Local), the project delivery method to be used for each construction contract valued at or above $100,000, shall be the recommended award method that provides and is approved by the Board as the best value. The Business Office, Purchasing, Facilities & Construction and Legal Departments have been working to ensure that all bond projects have been competitively procured and meet all legal and local purchasing policies and guidelines.

Lake Travis ISD issued a competitive sealed proposal for general contractor for the Reimer's Road Private Drive Project on January 3, 2025, with a closing date of February 4, 2025, and an anticipated award date of March 26, 2025, with Board approval. The District received four responses. The evaluation team was comprised of five people, two district employees from the Facilities and Construction Department, one district employee from the Purchasing Department and two representatives from the engineering firm Malone Wheeler. The District is recommending awarding the project to Liberty Civil Construction based on total points scored.

BUDGET PROVISIONS
2023 Bond Program - $11,881,138

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Robert Winovich – Director of Facilities and Construction
Cristy Soares – Director of Purchasing
Chad Crowson – General Counsel

ATTACHMENTS
Final Evaluation Summary

MEETING DATE
February 19, 2025

Lake Travis ISD
CSP Reimer's Road Private Drive
Bid #24-012

Board Agenda - Preliminary Tabulation

Step 1A - Qualifications

Item #	Description	Group Points Available	Austin Engineering Austin, TX 78746 Total Eval Points		Capital Excavation Company Buda, TX 78610 Total Eval Points		Cash Construction Company Pflugerville, TX 78660 Total Eval Points		Liberty Civil Construction Leander, TX 78641 Total Eval Points	
1A	Price	50	43.0		31.0		38.0		50.0	
1A	Technical Information	50	50.0		50.0		50.0		50.0	
	Total Points	**100**	**93.0**		**81.0**		**88.0**		**100.0**	

AWARD - The District Purchasing and Construction Departments are making a recommendation to the Board of Trustees on March 26, 2025 to award to Liberty Civil Construction based on the highest points scored.

AGENDA ITEM ACTION SHEET

AGENDA ITEM
2025-2026 Preliminary Budget Update

RECOMMENDED ACTION
For Presentation/Discussion only.

RATIONALE
Section 44.002 through 44.006 of the Texas Education Code establishes the legal basis for the budget development in school districts. These codes require that the District prepare a budget by the date set by the State Board of Education, currently August 20th for districts with an August 31st fiscal year-end. The budget document and the Annual Financial and Compliance Report are the primary vehicles used to present the financial plan and the results of operations of the District. The primary purposes of this budget document is to provide timely and useful information concerning the past, current and projected financial status of the general operations of the District, in order to facilitate financial decisions that support the educational goals of the District. Its intention is to serve as a starting point for 2025-2026 general operating budget discussions rather than to serve as a final budget document.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Brad Goerke – Director of Finance

ATTACHMENTS
Four Year Budget Model

MEETING DATE
February 19, 2025

Lake Travis ISD

Four Year Budget Model: 2024-2025 thru 2027-2028

Basic Assumptions (BA=$6,160)

February 19, 2025

	(Budget Model-Yr. 1)	(Budget Model-Yr. 2)	(Budget Model-Yr. 3)	(Budget Model-Yr. 4)
	2024-25	2025-26	2026-27	2027-28
Change in Student Enrollment	-263	35	110	178
Student Enrollment (October PEIMS/Moderate Projection)	11,010	11,045	11,155	11,333
Percent Change in Student Enrollment	-2.33%	0.32%	1.00%	1.60%
Weighted ADA (WADA)	12,769.998	12,762.483	12,865.583	13,034.854
Percent Change in Taxable Property Value	5.38%	-5.50%	2.00%	5.00%
Net Freeze Unadjusted Taxable Property Value	20,559,033,407	19,428,286,570	19,816,852,301	20,807,694,916
Tax Collection Rate	98.50%	98.50%	98.50%	98.50%
Total Tax Rate	1.0656	1.0398	1.025	1.0102
State Equalization Payments (Recapture)	50,611,945	36,771,622	35,619,245	36,662,018
Local Optional Homestead Exemption (LOHE) Value	3,317,383,455	3,134,927,365	3,197,625,912	3,357,507,208
LTISD Local Tax Relief due to 20% LOHE	35,350,038	32,596,975	32,775,666	33,917,538
Revenues	161,285,264	146,277,142	146,159,835	149,801,976
Appropriations	167,585,264	153,744,941	152,842,564	155,035,337
Change In Fund Balance	**-6,300,000**	**-7,467,799**	**-6,682,729**	**-5,233,361**
Beginning Fund Balance	41,139,500	34,839,500	37,371,701	30,688,972
Ending Fund Balance	**34,839,500**	**37,371,701**	**30,688,972**	**25,455,611**
Minimum Fund Balance (TEA/Rating Agencies)	29,243,330	29,243,330	29,305,830	29,593,330
Assumptions-				
Salaries for New Postions-Growth	891,500	0	0	0
Salary Increases (3%-2023/24, 1%-2024/25, 0%-2025/26)	706,000	0	0	0
Salaries & Benefits - New Campus	0	0	200,000	1,000,000
TRS On-Behalf Payments	209,408	0	0	50,000
Payroll Efficiencies	-702,137	0	0	0
Substitutes/Stipends/Other Adjustments	50,000	0	0	0
Estimated Change in Salaries	**1,154,771**	**0**	**200,000**	**1,050,000**
Change in Non-Payroll Operating Costs-Growth	110,238	0	0	0
Change in Recapture Costs	7,406,717	-13,840,323	-1,152,377	1,042,773
Change in Start-Up/Incremental Costs of New Campuses	0	0	50,000	100,000
Total Assumptions Included in Budget Model	**8,671,726**	**-13,840,323**	**-902,377**	**2,192,773**
Adjusted Basic Allotment	**6,160**	**6,160**	**6,160**	**6,160**
State & Net Local Revenue per Student	**10,052**	**9,914**	**9,910**	**9,983**
Net Local Expenditure per Student	**10,624**	**10,591**	**10,509**	**10,445**

- Change in fiscal year beginning 7/1/2026; 2025-26 reflects a 10-month expenditure budget ending 6/30/2026

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Request for Proposals for AV Replacement for Hudson Bend Middle School

RECOMMENDED ACTION
For Presentation only, action will be requested at the March 26, 2025 Board Meeting.

RATIONALE
The 2023 Bond Program provided funding for purchasing technology items, such as classroom educational and instructional equipment and infrastructure and operational equipment. Decisions about educational technology and infrastructure equipment have been discussed, planned, and vetted with the district stakeholders and the District's Long-Range Facilities Planning Committee.

Competitive sealed proposals to upgrade AV systems at Hudson Bend Middle School will be received on March 10, 2025.

This RFP is for the projectors, installation of those projectors and their mounts, removal of legacy AV cabling, and installation of AV cabling, patch, and paint for a turnkey installation. The proposals submitted will be evaluated based on their price, overall project experience/qualifications, and completeness of the response. A recommendation to award this contract to the company offering the best value for the district will be made at the March 26, 2025, board meeting.

BUDGET PROVISIONS
2023 Bond Funds

RESOURCE PERSONNEL
Chris Woehl - Executive Director for Technology

ATTACHMENTS
None

MEETING DATE
Feb 19, 2025

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Agreement with Travis County and Other Municipalities Regarding May 3, 2025 Joint Election

RECOMMENDED ACTION
Approve the Joint Election Agreement with Travis County for the May 3, 2025 Board Election.

RATIONALE
State law authorizes a school district that holds an election in May to conduct a joint election with a municipality within its district. Travis County will provide both election services and a joint election for most jurisdictions in Travis County that are holding a May election. Through the joint election agreement with Travis County, voters in Lake Travis Independent School District voting precincts can be served by common polling places. The agreement includes entity responsibilities and shared costs of the election.

BUDGET PROVISIONS
$50,000-General Fund Budget

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Chad Crowson – General Counsel
Suzanne Kelbaugh – Elections Official/Executive Assistant to the Superintendent

ATTACHMENTS
Joint Election Agreement for May 3, 2025 Elections

MEETING DATE
February 19, 2025

JOINT ELECTION AGREEMENT
FOR MAY 3, 2025 ELECTIONS

Recitals

1. Travis County (the "County") will be conducting general and special elections for the participating entities (each, a "Participating Entity," and together, the "Participating Entities") listed in Exhibit A, which is attached to and incorporated into this agreement, on May 3, 2025. Each Participating Entity requires elections to be held on May 3, 2025 in those portions the Participating Entity's territory that are located in Travis County.

2. Under Texas Election Code Section 271.002, political subdivisions of the State of Texas are authorized to hold elections jointly in voting precincts that can be served by common polling places if elections are ordered by the authorities of two or more political subdivisions to be held on the same day in all or part of the same territory.

3. Texas Government Code Chapter 791 authorizes local governments to contract with one another and with state agencies for various governmental functions, including those in which the contracting parties are mutually interested.

4. It would benefit the County, the Participating Entities, and their respective citizens and voters to hold the elections jointly in the election precincts that common polling places can serve.

Pursuant to Texas Election Code Sections 271.002 and 271.003 and Texas Government Code Chapter 791, this Joint Election Agreement is entered into by and between Travis County, a political subdivision of the State of Texas acting by and through the Travis County Commissioners Court, and the Participating Entities, each acting by and through their respective governing bodies.

I. Scope of Joint Election Agreement

This agreement covers conducting the May 3, 2025 General and Special Elections for the Participating Entities. The Participating Entities will hold these elections on May 3, 2025 ("Election Day") jointly for the Participating Entities' voters who reside in Travis County.

II. Election Officer

The Participating Entities hereby appoint the Travis County Clerk, the election officer for Travis County, as the election officer to perform or supervise the County's duties and responsibilities involved in conducting the joint election covered by this agreement. **III. Early Voting**

Each of the Participating Entities agrees to conduct its early voting jointly. Each of the Participating Entities appoints the Travis County Clerk, the early voting clerk for Travis County, as the early voting clerk for the joint election. Early voting for the

Participating Entities will be conducted at the dates, times, and locations to be mutually agreed upon by the election officer and authorized and ordered by the governing body of each Participating Entity.

A. County Responsibilities

1. The County will provide to the governing body of each Participating Entity a list of places, times, and dates of early voting suitable for consideration and adoption by the governing body, under Texas Election Code chapter 85.

2. The Travis County Clerk, as the early voting clerk, will be responsible for conducting early voting by mail and by personal appearance for all Travis County voters voting in the joint election. The Travis County Clerk will receive from each Participating Entity's regular early voting clerk applications for early voting ballots to be voted by mail, under Texas Election Code Title 7. The Travis County Clerk will send early voting ballots by mail and receive early voting ballots for early voting by mail. The Travis County Clerk may appoint such deputy early voting clerks as necessary to assist the Travis County Clerk with voting to take place at the early voting locations.

3. The County will determine the number of election workers to hire to conduct early voting in the joint election. The Travis County Clerk will arrange or contract for training for all election workers and will assign all election workers employed for early voting in the joint election. The training of these election workers is mandatory; these individuals will be compensated for their time in training. The County will provide a training facility for election schools to train election workers employed in conducting early voting, including early voting by personal appearance at main and temporary branch early voting polling places, early voting by mail, and other aspects of the early voting program for the joint election. The County will name early voting deputies and clerks employed to conduct early voting.

4. The County will provide and deliver all supplies and equipment necessary to conduct early voting for the joint election, including ballots, election forms, any necessary ramps, utility hook-ups, signs, registration lists and ballot boxes, to early voting polling places. The County will designate and confirm all early voting polling place locations.

5. The County will be responsible for preparing and transporting the electronic voting equipment necessary to conduct early voting. The County will perform all tests of voting equipment as required, including posting notice of equipment testing.

6. Under Election Code sections 66.058 and 271.010, the Participating Entities appoint the Travis County Clerk as the joint custodian of records for the sole purpose of preserving all voted ballots securely in a locked room in

the locked ballot boxes for the preservation period that the Election Code requires.

7. The County will receive ballot language in both English and Spanish from each Participating Entity and format the ballots as needed to include these languages. The County will provide each Participating Entity with a final proof of ballot language for approval before printing the ballots. Upon final proof approval, ballots will be printed in an expedited timeframe so as to allow ballot allocations for the Early Voting by Personal Appearance Program, and the ballot mail outs for the Early Voting by Mail Program.

8. A single joint voter sign-in process consisting of a common list of registered voters, and common signature rosters will be used for early voting. A single, combined ballot and single ballot box will be used. The County will use an electronic voting system, as defined and described in Texas Election Code Title 8, and agrees to use ballots that are compatible with such equipment.

9. The County will be responsible for conducting the Early Voting Ballot Board. The County will designate a person to serve as the presiding judge for the Early Voting Ballot Board and will provide that information to the governing body of each Participating Entity for entry of an order by that authority appointing this official. The presiding judge for the Early Voting Ballot Board is eligible to serve in this capacity. The presiding judge for the Early Voting Ballot Board will appoint two or more election clerks, and the judge and clerks will comprise the Early Voting Ballot Board and will count and return early voting ballots, and perform other duties the Election Code requires of it.

B. <u>Participating Entities' Responsibilities</u>

1. Each Participating Entity will appoint a qualified person to serve as the regular early voting clerk for the Participating Entity. The regular early voting clerk for each respective Participating Entity will receive requests for applications for early voting ballots to be voted by mail and will forward in a timely manner, as prescribed by law, any and all applications for early voting ballots to be voted by mail, received in the Entity's office, to the Travis County Clerk.

2. Each Participating Entity will appoint a qualified person to act as custodian of records for the Participating Entity to perform the duties imposed by the Election Code on the custodian of records for its respective entity.

3. Each Participating Entity will provide ballot language for the respective portion of the official ballot to the County in both English and Spanish. The Participating Entity must make any additions, modifications, deletions, or other changes to such ballot contents or language before the Participating Entity's final proof approval. The County will provide the Participating Entity with a final proof of ballot language, as it is to appear on the ballot,

for final proof approval. Upon final proof approval, the ballot will be programmed for the voting equipment in an expedited timeframe so as to allow ballot allocations for the Early Voting by Personal Appearance Program, and the printed ballot mail outs for the Early Voting by Mail Program.

IV. Election Day

A. County Responsibilities

1. The County will designate and confirm all Election Day polling place locations for the joint election, and will forward such information to the Participating Entities in a timely fashion to allow the governing body of the respective Participating Entities to enter orders designating such polling places.

2. The County will designate the presiding election judge and the alternate presiding election judge to administer the election in the precinct in which a common polling place is to be used and will forward such information to the Participating Entities to allow the governing bodies of the respective Participating Entities to enter appropriate orders designating such officials before the election. The presiding election judge and alternate presiding election judge must be qualified voters of the Travis County election precinct in which the joint election is held. The presiding election judge for the precinct in which a common polling place is used may appoint election clerks as necessary to assist the judge in conducting the election at the precinct polling place. The alternate presiding election judge may be appointed as a clerk. The alternate presiding election judge may serve as the presiding election judge for the precinct in the presiding election judge's absence. Election judges and clerks will be compensated at the rate established by the County. The Texas Election Code and other applicable laws will determine compensable hours.

3. One set of election officials will preside over the election in the precinct using a common polling place. There will be a single joint voter sign-in process consisting of a common list of registered voters and common signature rosters in the precinct using a common polling place. A single, combined ballot and single ballot box will be used. The officer designated by law to be the custodian of the voted ballots for the County will be custodian of all materials used in common in the precinct using a common polling place. The County will use an electronic voting system, as defined and described by Texas Election Code Title 8, and agrees to use ballots that are compatible with such equipment.

4. The County will arrange for training and will provide the instructors, manuals and other training materials deemed necessary for training all judges and clerks. Training for election judges and alternate judges is mandatory, and these individuals will be compensated for their time in training.

5. The County will arrange for election-day voter registration precinct lists for the joint election. The County will determine the amount of election supplies needed for Election Day voting.

6. The County, by and through the County Clerk's Elections Division, and Administrative Operations, will be responsible for preparing and transporting voting equipment and election-day supplies for use on Election Day.

7. The County, by and through the County Voter Registrar, will provide the list of registered voters as needed in the overlapping jurisdictions identified in the attached exhibits, with designation of registered voters in each Participating Entity, for use at the joint election day polling place on Election Day.

8. The common polling place is designated as the polling place that the County uses. At the common polling place, a single ballot box will be used for depositing all ballots cast in the joint election. At this polling place, one voter registration list and one combination poll list and signature roster form will be kept for the joint election. The final returns for each Participating Entity and the County will be canvassed separately by each respective Participating Entity. The Travis County Clerk will maintain a return center on Election Day for the purpose of receiving returns from the County. The Travis County Clerk will provide unofficial election results to the qualified individual appointed by each Participating Entity.

9. On Election Day, the Travis County Clerk or the clerk's Elections Division will field all questions from election judges.

10. The County will make available translators capable of speaking English and Spanish to assist Spanish-speaking voters in understanding and participating in the election process in the territory covered by this agreement.

B. Participating Entities' Responsibilities

1. Before Election Day, each Participating Entity will answer questions from the public with respect to the Participating Entity's election during regular office hours of 8:00 a.m. – 5:00 p.m.

2. The custodian of records for each Participating Entity will receive returns from the Travis County Clerk on Election Day.

V. Election Night

A. County Responsibilities

1. The County will be responsible for all activities on election night, including setting up a central counting station, coordinating and supervising the results tabulation, coordinating and supervising the physical layout of the support stations that are the joint election's receiving substations, and coordinating and managing election media coverage.

2. The County is responsible for transporting voted ballot boxes to the central counting station.

3. The County will appoint the presiding judge and alternate presiding judge of the central counting station to maintain order at the central counting station, to administer oaths as necessary, to receive sealed ballot boxes, and to perform such other duties that the Texas Election Code requires, and will forward such information to each Participating Entity in a timely fashion to allow the governing body of each Participating Entity to enter appropriate orders designating such election officials before the election. The presiding judge of the central counting station may appoint clerks to serve at the central counting station. In addition, the County will appoint a tabulation supervisor to be in charge of operating the automatic tabulating equipment at the central counting station; an individual to serve as central counting station manager; and an assistant counting station manager to be in charge of administering the central counting station and generally supervising the personnel working at the central counting station. The County will forward such information to each Participating Entity in a timely fashion to allow the governing body of each Participating Entity to enter appropriate orders designating such election officials before the election.

4. The County will provide the Participating Entities with reasonable space in a public area adjacent to the central counting station at which each Participating Entity may have representatives or other interested persons present during the counting process.

B. Participating Entities' Responsibilities

Other than receiving returns from the Travis County Clerk, the Participating Entities have no role or responsibility on the night of the election.

VI. County Resources

A. The County will provide the Elections Division permanent staff and offices to administer the joint election, under the Travis County Clerk's direction.

B. For early voting, the County will provide a locked and secure area in which voted ballot boxes will be stored until the Early Voting Ballot Board convenes. The County, by and through Administrative Operations, will be responsible for transporting the ballot boxes to the central counting station for the Early Voting Ballot Board.

C. The County will be responsible for providing and maintaining voting equipment and testing any voting equipment as required by the Texas Election Code.

D. The County will process the payroll for all temporary staff hired to conduct the joint election. The payroll processing includes statutory reporting and providing W-2 forms where applicable.

E. The County will conduct early voting as indicated in this agreement.

VII. Joint Election Costs; Payment

A. Concurrently with its submittal of an executed copy of this agreement each Participating Entity must also submit payment via check or ACH, in the amount equal to the deposit identified for that Participating Entity in the Cost Estimate attached as Exhibit B, which is also incorporated into this agreement. The County is under no obligation to conduct a Participating Entity's elections until the County receives that Participating Entity's payment of Cost Estimate. All checks must be made payable to Travis County. This deposit represents approximately 60% of the costs of the Participating Entity's share of the estimated election costs, or $100, whichever amount is greater. The County will submit an invoice to each Participating Entity for the balance of the Participating Entity's actual joint election expenses upon the election's completion. Joint-election expenses include expenses for facilities, personnel, supplies, and training that the County actually incurs for establishing and operating all early voting and election-day activities at the polling place in the joint election territory as well as activities related to tabulating votes, all as reflected on the Cost Estimate. Each Participating Entity will pay the total amount of its invoice no later than 30 days of receiving it.

B. In the event of a recount, the expense of the recount will be borne by the Participating Entity involved in the recount on a pro-rata basis.

C. In the event a Participating Entity cancels its respective election because of unopposed candidates under Texas Election Code Title 1, the Participating Entity will be responsible for its respective share of election expenses incurred through the date that the election is canceled as allocated to the cancelling entity based on the formula in the Cost Estimate, adjusted for the actual expenses incurred by the County through the date of the cancellation. If a Participating Entity cancels its election, the County will recalculate the allocation percentages among the remaining Participating Entities according to the formula used in the Cost Estimate.

D. In the event there are any expenses associated with processing a ballot arising from a write-in candidate, the Participating Entity that received the declaration will bear the expenses.

E. A Participating Entity that establishes an early voting polling place, other than one that was mutually agreed upon by all Participating Entities, will bear the expense of doing so. The Cost Estimate for each individual Participating Entity will include additional polling locations for each Participating Entity, as set forth in Exhibit B.

VIII. General Provisions

A. Legal Notices

Each of the Participating Entities will be individually responsible for preparing the election orders, resolutions, notices, and other pertinent documents for adoption or execution by its own respective governing board and for all related expenses. The Travis County Clerk will provide each Participating Entity information on changes affecting the Participating Entity's election, such as polling place changes and changes in voting equipment, when such changes are confirmed, verified, or otherwise become known to the clerk's office. Each of the Participating Entities will be individually responsible for posting or publishing election notices and for all related expenses. Each of the Participating Entities further will be individually responsible for election expenses incurred in relation to any polling place that is not a common polling place as designated in this agreement.

B. Communication

Throughout this agreement's term, the Travis County Clerk or the clerk's employee will meet as necessary with the designated representative of each Participating Entity to discuss and resolve any problems that might arise regarding the joint election.

C. Custodian

The Travis County Clerk will serve as the custodian of the keys to the ballot boxes for voted ballots in the joint election.

D. Effective Date

This agreement takes effect upon its complete execution by all Participating Entities and the County. The obligation of each Participating Entity to the County under this agreement will not end until that Participating Entity pays the County its share of the joint election costs.

IX. Miscellaneous Provisions

A. Amendment/Modification of Exhibits A and B

1. The Participating Entities acknowledge and agree that Exhibit A and Exhibit B may be amended to add or remove entities wishing to participate or cease participating in the agreement. The Participating Entities agree to future amendments of Exhibit A and Exhibit B and authorize the County to enter into such amendments without the Participating Entities' having to sign the future amendments. The County agrees to notify all Participating Entities of any amendments to Exhibit A and Exhibit B.

2. Except as otherwise provided, this Agreement may not be amended in any respect whatsoever except by a further agreement in writing, duly executed by the parties to this agreement. No official, representative, agent, or employee of the County has any authority to modify this Agreement except by express authorization from the Travis County Commissioners Court. No official, representative, agent, or employee of any Participating Entity has any authority to modify this agreement except by express authorization from the governing body of the respective Participating Entity. The Travis County Clerk may propose necessary amendments to this agreement in writing in order to conduct the joint election smoothly and efficiently, except that any such proposed amendment must be approved by the Travis County Commissioners Court and the governing body of each respective Participating Entity before the amendment will be effective.

B. Notice

Any notice to be given in this agreement, by any party to the other, must be in writing and delivered personally or by certified mail, return receipt requested, to the proper party at the addresses listed in Exhibit A.

Each party may change the address for notice to it by giving notice of the change under this section's terms.

C. Force Majeure

In the event that the County cannot perform any of its obligations in this agreement or is interrupted or delayed by any occurrence not occasioned by its own conduct, whether it be an act of God, the result of war, riot, civil commotion, sovereign conduct, epidemic, pandemic, or other event declared a disaster (including a disaster declared by the County Judge), or like reason, then the County will be excused from performing for such period of time as is reasonably necessary after such occurrence to remedy its effects.

D. Venue and Choice of Law

The Participating Entities agree that venue for any dispute arising under this agreement will lie in the appropriate courts of Austin, Travis County, Texas. This agreement is governed by and is to be construed under the laws of Texas and the United States of America.

E. Entire Agreement

This agreement contains the parties' entire agreement relating to the rights granted and the obligations assumed in it, and it supersedes all prior agreements, including prior election services contracts relating to each Participating Entity's May 4, 2024 election. Any prior agreements, promises, negotiations, or representations not expressly contained in this agreement are of no force or effect. Any oral

representations or modifications concerning this agreement have no force or effect, except a subsequent amendment in writing as this agreement provides.

F. Severability

If any provision of this agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality, or unenforceability will not affect the agreement's remaining provisions; and its parties will perform their obligations under the agreement's surviving terms and provisions.

G. Breach

In the event that any Participating Entity or the County breaches any of its obligations under this agreement, the non-breaching party will be entitled to pursue any and all rights and remedies allowed by law.

H. Payments from Current Revenues

Payments made by the Participating Entities in meeting their obligations under this agreement will be made from current revenue funds available to the governing body of the respective Participating Entity. Payments made by the County in meeting its obligations under this agreement will be made from current revenue funds available to the County.

I. Other Instruments

The Participating Entities agree that they will execute other and further instruments or any documents as may become necessary or convenient to effectuate and carry out this agreement's purposes.

J. Third-Party Beneficiaries

Except as otherwise provided in this agreement, nothing in this agreement, expressed or implied, is intended to confer upon any person, other than the parties to it, any of its benefits, rights, or remedies.

K. Other Joint Election Agreements

The County and the Participating Entities expressly understand and acknowledge that each may enter into other joint election agreements with other political subdivisions, to be held on Election Day and at common polling places covered by this agreement, and that the addition of other political subdivisions as parties to this agreement will require amending Exhibits A and B.

L. Mediation

When mediation is acceptable to both parties in resolving a dispute arising under this agreement, the parties agree to use a mutually agreed upon mediator, or a

person appointed by a court of competent jurisdiction, for mediation as described in Texas Civil Practice and Remedies Code section 154.023. Unless both parties are satisfied with the mediation's result, the mediation will not constitute a final and binding resolution to the dispute. All communications within the scope of the mediation will remain confidential as described in section 154.073, unless both parties agree, in writing, to waive the confidentiality. Despite this, the parties intend to fully comply with the Texas Open Meetings Act and the Texas Public Information Act whenever applicable. The term "confidential" as used in this agreement has the same meanings as defined and construed under the Texas Public Information Act and the Texas Open Meetings Act. Notwithstanding any provision to the contrary, nothing in this Agreement requires the County or a Participating Entity to waive any applicable exceptions to disclosure under the Texas Public Information Act.

M. Counterparts

This Agreement may be executed in multiple counterparts, all of which will be deemed originals and with the same effect as if all parties to it had signed the same document. Signatures transmitted electronically by e-mail in a "PDF" format or by DocuSign or similar e-signature service shall have the same force and effect as original signatures All of such counterparts will be construed together and will constitute one and the same agreement.

TRAVIS COUNTY

BY: _____
Dyana Limon-Mercado
County Clerk

Date: _____

SIGNATURE PAGE

Name of Participating Entity	Lake Travis Independent School District
Address	3322 Ranch Road 620 South Austin, Texas 78738
Name of Authorized Signatory	Erin Archer
Signature	_____
Date signed	February 19, 2025
E-mail address	archere@ltisdschools.org

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Election Services Agreement between Travis County and Lake Travis Independent School District

RECOMMENDED ACTION
Approve the Election Services Agreement with Travis County.

RATIONALE
For the upcoming May 3, 2025 Trustee Election, the Administration proposes to contract with Travis County to conduct the election. The purpose of this Agreement is to maintain consistency and accessibility in voting practices, polling places, and election procedures in order to best assist the voters of the District.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Chad Crowson – General Counsel
Suzanne Kelbaugh – Elections Official/Executive Assistant to the Superintendent

ATTACHMENTS
Election Services Agreement

MEETING DATE
February 19, 2025

ELECTION AGREEMENT BETWEEN TRAVIS COUNTY AND LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

Pursuant to Chapter 31, Subchapter D, Chapter 123, and Chapter 271 of the Texas Election Code and Chapter 791 of the Texas Government Code, Travis County (the "County") and Lake Travis Independent School District ("Participating Entity") enter into this agreement (this "Agreement") for the Travis County Clerk, as the County's election officer (the "Election Officer"), to conduct the Participating Entity's elections, including runoffs, and for the Participating Entity's use of the County's current or future-acquired election equipment for any voting system that the County adopts, as authorized under Title 8 of the Texas Election Code, for all Participating Entity elections. The purpose of this Agreement is to maintain consistency and accessibility in voting practices, polling places, and election procedures in order to best assist the voters of the Participating Entity.

Section 1. GENERAL PROVISIONS

(A) Except as otherwise provided in this Agreement, the term "election" refers to any Participating Entity election, occurring on any uniform election date prescribed by the Texas Election Code or a primary election date, along with any resulting runoff, if necessary, within all Participating Entity's territory located in Travis County. If a runoff is necessary, the Participating Entity shall work with the Election Officer to determine a mutually acceptable run-off date. In the event that the Participating Entity and the Election Officer do not agree on a run-off date, the Participating Entity agrees to the run-off date selected by the Election Officer.

(B) If the Participating Entity determines it is necessary to conduct an election during a time other than that specified in Section 1(A), the Election Officer and a representative designated by the Participating Entity will meet as soon as possible thereafter to determine the feasibility of the Election Officer conducting such an election. If both parties agree that the Election Officer will administer the election, the new election will be based on all other applicable provisions of this Agreement except provisions that are inconsistent and cannot be feasibly applied.

(C) Except as otherwise provided in this Agreement:

(1) The term "Election Officer" refers to the Travis County Clerk;
(2) The term "precinct" means all precincts in the territory of the Participating Entity located within Travis County.
(3) The term "election services" refers to services used to perform or supervise any or all of the duties and functions that the Election Officer determines necessary for the conduct of an election.
(4) The term "cost for election services" includes the costs for personnel, supplies, materials, or services needed for providing these services and an

administrative fee as permitted by the Texas Election Code but does not refer to costs relating to the use of the voting equipment

(D) Except as otherwise provided in this Agreement, the cost for "use of voting equipment" for a particular election is the amount the County will charge the Participating Entity for use of the County's voting equipment in use at the time of that election.

(E) The Participating Entity agrees to commit the funds necessary to pay for all election-related expenses for Participating Entity elections in accordance with this Agreement.

(F) The Election Officer has the right to enter into agreements with other entities at any time, including during the dates listed in Section 1(A).

(G) As a condition for providing election services and equipment usage, the Election Officer may require authorities of political subdivisions holding elections on the same day in all or part of the same territory to enter into a joint election agreement as authorized in Chapter 271 of the Texas Election Code, and the Participating Entity agrees to enter into any joint election agreement required by the County.

SECTION 2. PARTICIPATING ENTITY'S USE OF VOTING EQUIPMENT; DUTIES OF THE ELECTION OFFICER AND OF THE PARTICIPATING ENTITY

The County shall make available to the Participating Entity the County's current voting system and any future-acquired voting system as authorized under Title 8 of the Texas Election Code, subject to restrictions and conditions imposed by the Election Officer to ensure availability of the equipment for County-ordered elections, primary elections, special elections, and subsequent runoff elections, if applicable. The Election Officer may also impose restrictions and conditions to protect the equipment from misuse or damage.

SECTION 3. APPOINTMENT OF ELECTION OFFICER

(A) The Travis County Election Officer ("Election Officer") is appointed to serve as the Participating Entity's Election Officer and Early Voting Clerk to conduct the Participating Entity's elections described in Section 1.

(B) As the Participating Entity's Election Officer and Early Voting Clerk, the Election Officer shall coordinate, supervise, and conduct all aspects of administering voting in Participating Entity elections in compliance with all applicable laws, subject to Section 3(C) below.

(C) The Participating Entity shall continue to perform those election duties listed in (1) through (6) below and any other election duties, such as receipt of candidate applications, that are not allowed to be delegated to another governmental entity:

(1) Preparing, adopting, and publishing all required election orders, resolutions,

notices, and other documents, including bilingual materials, evidencing action by the governing authority of the Participating Entity necessary to the conduct of an election, except that:

a. The Election Officer does not provide newspaper notices on behalf of the Participating Entity with respect to a specific election.

b. With respect to each debt obligation election the Election Officer conducts for the Participating Entity pursuant to this Agreement:

i. The Election Officer, after receiving from the Participating Entity a copy of the debt obligation election order, shall post the notice required by and in accordance with Texas Election Code Section 4.003(f)(1) on election day and during early voting by personal appearance, in a prominent location at each polling place;

ii. The Election Officer shall provide written confirmation to the Participating Entity that the debt obligation election order was posted in accordance with Texas Election Code Section 4.003(f)(1); and

iii. The Participating Entity shall pay any applicable expenses incurred by the Election Officer that directly relates to the posting required by Texas Election Code Section 4.003(f)(1).

(2) Preparing the text for the Participating Entity's official ballot in English and Spanish and any other languages as required by law;

(3) Providing the Election Officer with a list of candidates or propositions showing the order and the exact manner in which the candidates' names and the propositions are to appear on the official ballot;

(4) Conducting the official canvass of a Participating Entity election;

(5) Administering the Participating Entity's duties under state and local campaign finance laws;

(6) Filing the Participating Entity's annual voting system report to the Secretary of State as required under Texas Election Code Chapter 123.

(D) The Participating Entity shall also be responsible for proofing and attesting to the accuracy of all ballot language, including any required language translations, and format information programmed by the County. This includes any information programmed for use with the audio or tactile button features of the equipment. The Participating Entity may also monitor and review all logic and accuracy testing and mandatory tabulations. The Participating Entity will complete its duties within timeframes as prescribed by the County. If the Participating Entity finds any discrepancies or concerns, it will immediately report them to the Election Officer and work with her to resolve any issues so that final approval can be reached. The Participating Entity shall be responsible for any and all actual costs associated

with correcting the ballot and ballot programming if the error is discovered after the Participating Entity has signed off on its final proof containing the error.

(E) Suzanne Kelbaugh will assist the County whenever possible when the conduct of the election requires assistance from Participating Entity departments and staff. Suzanne Kelbaugh will serve as the Regular Early Voting Clerk for the Participating Entity to receive requests for applications for early voting ballots and forward these applications to the Joint Early Voting Clerk. Suzanne Kelbaugh will serve as the Custodian of Records for the Participating Entity to complete those tasks in the Texas Election Code that the Election Officer will not perform.

SECTION 4. ELECTION WORKERS AND POLLING PLACES

(A) For presentation to the governing body of the Participating Entity, the County shall provide a list containing the locations, times, and dates of early voting polling places suitable for consideration and adoption by the governing body in accordance with Texas Election Code Chapter 85. The Election Officer will designate and confirm all Election Day polling place locations.

(B) The Election Officer will assume the responsibility for recruiting election personnel; however, if by the 5th day before the Election, the Election Officer reports vacancies in positions for election judges, alternate judges, election day clerks, early voting ballot board, receiving substation clerks, or any other key election personnel, the Participating Entity shall provide emergency personnel in these positions.

(C) The Election Officer shall notify each of the election judges and alternates of their appointment and the eligibility requirements that pertain to them and to the selection of Election Day clerks. Included in this notification will be the number of clerks that each precinct should have in addition to the election judge and alternate judge. The election judges and/or the alternates are responsible for recruiting and supervising their clerks.

(D) All election workers must agree to attend training sessions as determined by the Election Officer. Costs for these training sessions and compensation for attendees will be included as part of the election services costs.

(E) During any election and any subsequent runoff election that involve entities in addition to the Participating Entity, the Election Officer will work with all parties to find a plan that can be agreed upon regarding the designation of polling places. If agreement cannot be reached, the Election Officer will resolve the differences. **In all cases, the Election Officer has sole discretion to determine whether polling place changes are necessary**.

SECTION 5. PAYMENTS FOR ELECTION SERVICES

(A) Costs and payments for the use of voting equipment are addressed separately in Section 6 of this Agreement.

(B) Requests for Election Services. For each election the Participating Entity desires the Election Officer to conduct, the Participating Entity must submit a written request to the Election Officer that describes the general nature of the election and specifies the date of the election.

(C) Cancellations. On or before 11:59 p.m. on the 68th day before an election for which the Participating Entity has requested election services, the Participating Entity shall notify the Election Officer as to whether the Participating Entity anticipates the cancellation of its election, and on or before 11:59 p.m. on the 60th day before the election the Participating Entity shall notify the Election Officer as to whether the Participating Entity will cancel that election. If the Election Officer receives written notice from the Participating Entity on or before 11:59 p.m. of the 60th day before an election that the Participating Entity's election will be cancelled in accordance with Subchapters C and D of Texas Election Code Chapter 2, the Contracting Officer shall only be entitled to receive the actual expenses incurred before the date of cancellation in connection with the election and an administrative fee of $100.

(D) Notice, Cost Estimate, Initial Invoicing, and Initial Payment.

(1) Notwithstanding the provisions in Section 9(B), the County and the Participating Entity agree that notice under Section 5 can be provided via e-mail. The following e-mail address will be used for e-mail communications to or from the County pursuant to Section 5: elections@traviscountytx.gov, with a copy to ElectionEntities@traviscountytx.gov. The Participating Entity has designated Suzanne Kelbaugh as the Participating Entity's representative for sending and receiving e-mail communications under Section 5, and the Participating Entity designates the following e-mail address as the Participating Entity's email address for sending and receiving e-mail communications pursuant to Section 5: kelbaughs@ltisdschools.org .

(2) Initial Cost Estimate. On or before the 60th day before an election for which the Participating Entity has requested election services, the Election Officer will mail and/or email to the Participating Entity a cost estimate for conducting the election. The cost estimate will include an administrative fee that is equal to 10% of the total estimated cost of conducting the Participating Entity's election, excluding the costs of voting equipment. In the event of a joint election, the cost estimate will reflect that election costs will be divided on a pro rata basis among all entities involved in the election in the manner set forth in this Section 5. The proportional cost for the Election Officer to conduct each participating entity's election will be calculated by dividing the number of registered voters in the territorial jurisdiction of each participating

entity by the total number of registered voters for all of the participating entities involved in the joint election and multiplying that quotient by the total cost of the election. The product of these numbers is the pro rata cost share for each participating entity. The Participating Entity acknowledges and understands that if any other participating entity listed in the cost estimate cancels its election, each remaining participating entity's pro rata cost (including the Participating Entity's pro rata cost share) will result in a proportionate cost increase.

(3) Initial Invoice and Initial Payment. Along with the initial cost estimate, the Election Officer will also include an initial invoice for the Participating Entity to pay 60% of the initial cost estimate. The Participating Entity must pay the County the amount specified in each invoice no later than 30 days after the Participating Entity's receipt of the invoice.

(4) Runoff Elections. For each runoff election the Participating Entity has requested that the Election Officer conduct, the Participating Entity must make a payment equal to 60% of the projected costs for the runoff election no later than three business days after receiving that cost estimate from the Election Officer. The projected share of election costs will include an administrative fee that is equal to 10% of the total estimated cost of conducting the Participating Entity's runoff election, excluding the costs of voting equipment.

(5) Each party may change its respective email addresses for e-mail communications under this Section 5, without the need to amend this Agreement, by sending notice to the other party in accordance with Section 9(B).

(F) Final Accounting and Final Invoice. The County will send the Participating Entity a final invoice of election expenses not later than 90 days after an election unless the Election Officer notifies the Participating Entity during that 90-day period following the election that the Election Officer requires additional time to send a final invoice to the Participating Entity. The final invoice will include a listing of additional costs incurred at the Participating Entity's behalf and specify the total payment due from the Participating Entity for any unpaid portion of the Participating Entity's costs.

(1) Within 30 days after receipt of an election cost invoice setting forth the Election Officer's actual contract expenses and charges incurred in the conduct of the election, the Participating Entity shall pay the Election Officer the balance due on each final invoice no later than 30 days after the Participating Entity's receipt of that invoice.

(2) A refund may be due from the County to the Participating Entity if the final costs are lower than the amount already paid by the Participating Entity or if,

at the end of the calendar year, the County Auditor's Office makes adjustments to the election workers' payroll and the amount already paid by the Participating Entity for election worker payroll costs exceeds the payroll amounts calculated by the County Auditor's Office.

(G) The Participating Entity shall promptly review an election invoice and any supporting documentation when received from the County. The Participating Entity may audit, during the County's normal business hours, relevant County election or accounting records upon reasonable notice to the County. The Participating Entity shall pay the entire final invoice or the undisputed portion of the final invoice not later than the 30th day after receiving the invoice. Failure by the Participating Entity to timely pay an invoice in full may impact the Election Officer's participation in future elections with the Participating Entity.

SECTION 6. PAYMENTS FOR USE OF VOTING EQUIPMENT

(A) The Election Officer shall conduct elections using a voting system certified by the Secretary of State in accordance with the Texas Election Code and that has been approved for use by the Travis County Commissioners Court unless otherwise agreed upon by the Participating Entity, the Travis County Clerk, and the Travis County Commissioners Court.

(B) The Participating Entity shall make payments to Travis County as consideration for the use of the County's voting equipment.

(1) For each election the Election Officer conducts for the Participating Entity after January 1, 2025, through January 1, 2026, the Participating Entity shall pay (a) the sum of four percent of the cost of the electronic voting system equipment installed at a polling place and four percent for each unit of other electronic equipment used by the Travis County Clerk's Office to conduct the election or provide election services, if the sum is greater than $100.00, and (b) $100.00 if the sum described in (a) is $100.00 or less.

(2) In this Agreement "other electronic equipment" includes ballot marking devices, ballot scanners, ballot printers, ballot tabulators, electronic pollbooks, and ballot programming software.

(C) Payment by the Participating Entity to the County for voting equipment is due no later than 30 days after the Participating Entity's receipt of an invoice from the County.

(D) If the County acquires additional equipment, different voting equipment, or upgrades to existing equipment during the term of this Agreement, the charge for the use of the equipment may be renegotiated.

SECTION 7. ADDITIONAL EARLY VOTING LOCATIONS

(A) All of the Participating Entity's voters within Travis County will have access to all of the Travis County Early Voting sites in each election at no additional cost.

(B) If the Participating Entity desires to have one or more early voting sites that are in addition to those sites the Election Officer has already selected for a specific election, the Participating Entity must submit the request to the Election Officer no later than 60 days before the election, and the Election Officer will thereafter provide a written estimate to the Participating Entity that sets forth the estimated cost for providing the additional early voting location(s) and the deadline by which the cost estimate must be paid. If, after receiving the cost estimate, the Participating Entity desires to move forward with having the additional early voting location(s), the Participating Entity will notify the Election Officer and include payment of the cost estimate with the Participating Entity's notice to the Election Officer no later than the deadline specified in the Election Officer's cost estimate. *Pursuant to Texas Election Code Section 85.064(b) and notwithstanding any provision to the contrary, the Election Officer has sole discretion to determine whether to provide any additional early voting sites requested by the Participating Entity*.

SECTION 8. COMMUNICATIONS

(A) The Participating Entity and the Election Officer shall each designate a member of their staff to serve as the primary contact for the respective offices under this Agreement and provide the name and contact information for that individual to the other party. Each party may change their designated staff members by sending notice to the other party without the further need to amend this Agreement.

(B) Throughout the term of this Agreement, the Participating Entity and the County will engage in ongoing communications on issues related to Participating Entity elections, the use of County's voting equipment, and the delivery of services under this Agreement and, when necessary, the County Clerk, Elections Division staff members, and other election workers shall meet with the Participating Entity to discuss and resolve any problems which might arise under this Agreement.

(C) The Election Officer shall be the main point of media contact for election information related to election administration. The Participating Entity shall designate a contact to be the main point of contact for matters related to the content of the Participating Entity's ballot or candidates.

SECTION 9. MISCELLANEOUS PROVISIONS

(A) Amendment/Modification

Except as otherwise provided, this Agreement may not be amended, modified, or changed in any respect whatsoever, except by a further Agreement in writing and duly executed by the parties hereto. No official, representative, agent, or employee of the County has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the Commissioners Court of Travis County, Texas. No official, representative, agent, or employee of the Participating Entity has any authority to modify this Agreement except pursuant to such expressed authorization as may be granted by the governing body of the Participating Entity. Dyana Limon-Mercado, Travis County Clerk (or her successor), may propose necessary amendments or modifications to this Agreement in writing in order to conduct a joint election smoothly and efficiently, except that any such proposals must be approved by the Commissioners Court of the County and the governing body of the Participating Entity.

(B) Notice

Unless otherwise provided herein, any notice to be given hereunder by any party to the other shall be in writing and may be affected by personal delivery, by certified mail, or by common carrier. Notice to a party shall be addressed as follows:

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT
Suzanne Kelbaugh, Executive Assistant to the Superintendent
3322 Ranch Road 620 South
Austin, Texas 78738

TRAVIS COUNTY
Honorable Dyana Limon-Mercado, Travis County Clerk (or her successor)
1000 Guadalupe Street, Room 222
Austin, Texas 78701

Cc: Honorable Delia Garza, Travis County Attorney (or her successor)
314 West 11th Street, 5th Floor
Austin, Texas 78701

Notice by hand-delivery is deemed effective immediately, notice by certified mail is deemed effective three days after deposit with a U.S. Postal Office or in a U.S. Mail Box, and notice by a common carrier, is deemed effective upon receipt. Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this Section. When notices by e-mail are permitted by this Agreement, (1) the notice is deemed effective upon the day it is sent if the e-mail is received before 5:00 p.m. on a business day; (2) the notice is deemed effective on the first business day after the e-mail was received if the email

was received after 5:00 p.m. on a business day or anytime on a Saturday or Sunday. In this Agreement, “business day” means any weekday that is not a holiday designated by the Travis County Commissioners Court.

(C) Force Majeure

In the event that the performance by the County of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the act or condition of any persons not a party hereto or in privity thereof, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

(D) Venue and Choice of Law

The Participating Entity agrees that venue for any dispute arising under this Agreement will lie in the appropriate courts of Austin, Travis County, Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the United States of America.

(E) Entire Agreement

This Agreement contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed and also supersedes all prior agreements, including prior election services contracts and prior agreements to conduct joint elections. Any prior agreements, promises, negotiations, or representations not expressly contained in this Agreement are of no force or effect. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing as provided herein.

(F) Severability

If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the remaining provisions of this Agreement. Parties to this Agreement shall perform their obligations under this Agreement in accordance with the intent of the parties to this Agreement as expressed in the terms and provisions of this Agreement.

(G) Breach

In the event that Participating Entity or County breaches any of its obligations under this Agreement, the non-breaching party shall be entitled to pursue any and all rights and remedies allowed by law.

(H) Payments from Current Revenues

Payments made by the Participating Entity in meeting its obligations under this Agreement shall be made from current revenue funds available to the governing body of the Participating Entity. Payments made by the County in meeting its obligations under this Agreement shall be made from current budget or revenue available to the County.

(I) Other Instruments

The County and the Participating Entity agree that they will execute other and further instruments, or any documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(J) Third Party Beneficiaries

Except as otherwise provided herein, nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto, any benefits, rights or remedies under or by reason of this Agreement.

(K) Joint Election Agreements

The County and the Participating Entity expressly understand and acknowledge that each may enter into other joint election agreements with other jurisdictions, to be held on Election Day and at common polling places covered by this Agreement.

When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.053 of the Texas Civil Practice and Remedies Code unless both parties agree, in writing, to waive the confidentiality. Notwithstanding the foregoing, the parties intend to fully comply with the Texas Open Meetings Act and the Texas Public Information Act whenever applicable. The term “confidential” as used in this Agreement has the same meaning as defined and construed under the Texas Public Information Act and the Texas Open Meetings Act.

(L) Addresses for Payments

Payments made to the County, or the Participating Entity under this Agreement shall be addressed to following respective addresses:

Travis County Clerk – Elections Division
P.O. Box 149325

Austin, Texas 78714

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT
Suzanne Kelbaugh, Executive Assistant to the Superintendent
3322 Ranch Road 620 South
Austin, Texas 78738

(M) This Agreement is effective upon execution by both parties and remains in effect until either party terminates this agreement for any reason upon providing 60 days written notice to the other party.

(N) All times referenced in this Agreement are to Central Time, and in all instances, the time-stamp clock used by the Travis County Clerk's Office at 5501 Airport Boulevard in Austin, Texas is the official clock for determining the correct time.

(O) The individuals below have been authorized to sign this Agreement.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, and this Agreement takes effect on the date it is fully executed by the Participation Entity, the Travis County Judge (on behalf of the Travis County Commissioners Court), and the Travis County Clerk.

[Signatures on following page]

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

BY: _____

Erin Archer
President, School Board

DATE: February 19, 2025

TRAVIS COUNTY

BY: _____

Dyana Limon-Mercado (or her successor)
County Clerk

DATE: _____

AGENDA ITEM ACTION SHEET

AGENDA ITEM
2024-2025 Budget Amendment to the General Operating Fund and Debt Service Fund

RECOMMENDED ACTION
Approve the 2024-2025 Budget Amendment to the General Operating Fund and Debt Service Fund as presented.

RATIONALE
The general operating budget amendment includes:

- Decrease to local tax revenue of $700,000 due to protest settlements and additional exemptions and refunds filed since October 2024.
- Increase in Foundation School Program funds of $350,000 to account for a decrease in the taxable value certified in the 2024 Comptroller's Property Value Study.
- Decrease in the State Recapture payment of $375,000 due to a decrease in tax collections.
- Decrease of $125,000 in debt service payments for operating lease agreements.
- Increase in final property insurance premium payments of $100,000.
- Increase in legal costs of $200,000.

The overall impact to the General Fund is an increase in the budget deficit of $300,000, resulting in an estimated deficit of $6,300,000 for the 2024-2025 fiscal year.

The debt service fund budget amendment includes:

- Decrease of $1,500,000 in local tax revenue due to additional homestead exemption applications and property value protest settlements.
- Decrease of $982,000 in state revenue of hold harmless aid due to the increase to the state homestead exemption.
- Decrease of $1,012,000 in the amount bond principal redeemed prior to maturity.

The overall impact to the Debt Service Fund is a balance budget for the 2024-2025 fiscal year.

BUDGET PROVISIONS
2024-2025 General Operating and Debt Service Budgets

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Brad Goerke – Director of Finance

ATTACHMENTS
2024-2025 Budget Amendment #2 – General Operating Fund
2024-2025 Budget Amendment #1 – Debt Service Fund

MEETING DATE
February 19, 2025

Lake Travis ISD
General Operating Fund-Budget Amendment #2
2024-2025

		2024-2025 Original Budget	Recommended Amendments	2024-2025 Amended Budget
Revenues				
5711	Current Year Taxes	$ 139,500,000	$ (700,000)	$ 138,800,000
5700	Other Local Revenues	$ 7,650,000	$ -	$ 7,650,000
5800	State Program Revenues	$ 14,326,764	$ 350,000	$ 14,676,764
5900	Federal Revenue	$ 158,500	$ -	$ 158,500
	TOTAL REVENUES	**$ 161,635,264**	**$ (350,000)**	**$ 161,285,264**
Expenditures				
11	Instruction	$ 67,561,000	$ -	$ 67,561,000
12	Instructional Resources	$ 1,071,983	$ -	$ 1,071,983
13	Staff Development	$ 1,400,016	$ -	$ 1,400,016
21	Instructional Administration	$ 2,361,963	$ -	$ 2,361,963
23	School Administration	$ 5,828,584	$ -	$ 5,828,584
31	Guidiance & Counseling	$ 5,484,061	$ -	$ 5,484,061
32	Social Work Services	$ 475,689	$ -	$ 475,689
33	Health Services	$ 1,087,609	$ -	$ 1,087,609
34	Transportation	$ 4,846,547	$ -	$ 4,846,547
35	Food Service	$ 122,601	$ -	$ 122,601
36	Co-Curricular Activities	$ 2,745,259	$ -	$ 2,745,259
41	General Administration	$ 4,325,194	$ 200,000	$ 4,525,194
51	Plant & Maintenance	$ 12,678,467	$ 100,000	$ 12,778,467
52	Safety & Security	$ 1,696,927	$ -	$ 1,696,927
53	Non-Instructional Data Processing	$ 3,136,783	$ -	$ 3,136,783
61	Community Services	$ 528,009	$ -	$ 528,009
71	Debt Service	$ 275,000	$ (125,000)	$ 150,000
81	Facilities/Construction	$ 40,867	$ -	$ 40,867
91	State Transfers (Recapture)	$ 50,986,945	$ (375,000)	$ 50,611,945
92	Incremental WADA Costs	$ -	$ -	$ -
93	Sp. Ed. Transfer Payments	$ 66,760	$ -	$ 66,760
95	JJAEP Transfer Payments	$ 15,000	$ -	$ 15,000
99	Travis County Appraisal District	$ 1,050,000	$ -	$ 1,050,000
	TOTAL EXPENDITURES	**$ 167,785,264**	**$ (200,000)**	**$ 167,585,264**
Other Resources and (Uses)				
7990	Other Resources	$ 150,000	$ (150,000)	$ -
8990	Other Uses	$ -	$ -	$ -
	TOTAL RESOURCES & USES	**$ 150,000**	**$ (150,000)**	**$ -**
1200	**Excess (Deficiency) Of Revenues Over Expenditures**	**$ (6,000,000)**	**$ (300,000)**	**$ (6,300,000)**
3000	**Beginning Fund Balance-9/1**	**$ 41,139,503**		**$ 41,139,503**
3600	**Ending Fund Balance-8/31**	**$ 35,139,503**		**$ 34,839,503**

Note: The general operating revenue budget amendment includes a decrease to local tax revenue of $700,000 due to protest settlements and additional exemptions and refunds filed reflected in the supplemental tax roll dated January 9, 2025, and an increase in state funding of $350,000 to account for a decrease from the estimated amount in the 2024 taxable value issued in the Comptroller's Property Value Study. The general operating expenditures budget amendment includes an decrease to State Recapture of $375,000 due to a decrease in tax collections, a decrease of $125,000 in debt service for operating lease agreements, an increase in property insurance premiums of $100,000, and an increase in legal costs of $200,000.

Lake Travis ISD
Debt Service Fund-Amendment #1
2024-2025

		2024-2025 Adopted Budget	Recommended Amendments	2024-2025 Amended Budget
Revenues				
5711	Current Year Taxes	$ 63,000,000	$ (1,500,000)	$ 61,500,000
5700	Other Local Revenues	$ 800,000	$ -	$ 800,000
5800	State Program Revenues	$ 3,400,000	$ (982,000)	$ 2,418,000
5900	Federal Revenue	$ -	$ -	$ -
	TOTAL REVENUES	**$ 67,200,000**	**$ (2,482,000)**	**$ 64,718,000**
Expenditures				
71	Debt Service	$ 65,730,000	$ (1,012,000)	$ 64,718,000
	TOTAL EXPENDITURES	**$ 65,730,000**	**$ (1,012,000)**	**$ 64,718,000**
				$ -
1200	**Excess (Deficiency) Of Revenues Over Expenditures**	**$ 1,470,000**	**$ (1,470,000)**	**$ -**
3000	**Beginning Fund Balance-9/1**	**$ 10,742,182**		**$ 10,742,182**
3600	**Ending Fund Balance-8/31**	**$ 12,212,182**		**$ 10,742,182**

Note: Budget amendment reflects a decrease in current year tax revenue due to additional homestead exemption applications and property value protest settlements, a decrease in state revenue of hold harmless aid for increase to homestead exemption, and an expenditure decrease in the amount of early redemption of bond principal.

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Resolution Authorizing Wage Payments for Employees Impacted by January 21, 2025 School Closure

RECOMMENDED ACTION
Approve motion to adopt Resolution 021925-01 regarding January 21, 2025 school closure.

RATIONALE
On January 21, 2025, LTISD was closed due to inclement weather. Resolution No. 021925-01 authorizes wage payments for all regular full-time and part-time employees—contractual and noncontractual, salaried and non-salaried—who would have otherwise been scheduled to work on January 21, 2025. This resolution ensures employees do not suffer a loss of pay due to the closure, supporting staff morale, reducing turnover, and ensuring continuity of operations. Additionally, nonexempt employees who were required to work during the emergency closure will receive premium pay, including time-and-a-half where applicable, in accordance with Board Policy DEA(LOCAL).

BUDGET PROVISIONS
2024-2025 Budget – previously allocated in staff appropriations

RESOURCE PERSONNEL
Chad Crowson - General Counsel
Pam Sanchez - Acting Superintendent/Assistant Superintendent of Business Services
Susan Fambrough - Assistant Superintendent of Human Resources

ATTACHMENTS
Proposed Resolution 021925-01 regarding January 21, 2025 School Closure

MEETING DATE
February 19, 2025

RESOLUTION OF THE BOARD OF TRUSTEES OF THE LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT REGARDING JANUARY 21, 2025 SCHOOL CLOSURE

WHEREAS, the Lake Travis Independent School District was closed January 21, 2025 due to an emergency caused by inclement weather; and

WHEREAS, the Lake Travis ISD Board of Trustees (the "Board") is authorized by Texas Education Code § 45.105 to expend funds of Lake Travis Independent School District for purposes necessary in the conduct of the public schools as determined by the Board; and

WHEREAS, the Board acknowledges that during an emergency closing, most District employees are instructed not to report for work, while other employees may be called upon to provide emergency-related services; and

WHEREAS, the Board finds that a need exists to address wage payments for employees who are idled and those required to work during emergency closings; and

WHEREAS, the Board determines that employees who are instructed not to report to work may suffer a loss of pay if the District is closed; and

WHEREAS, the Board concludes that continuing wage payments to all regular full-time and part-time employees—contractual and noncontractual, salaried and non-salaried—who suffer a loss in pay due to an emergency closing serves the public purposes of maintaining morale, reducing turnover, and ensuring continuity of District staffing when schools reopen; and

WHEREAS, as to nonexempt employees who are called on to work during an emergency closing, the Board further concludes that payment of these employees at a premium rate, as provided at DEA(LOCAL), serves the public purposes of maintaining morale, providing equity between idled employees and employees who provide emergency-related services, and recognizing the services of essential staff;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT:

1. All of the above paragraphs are incorporated into and made a part of this resolution.

2. The Board authorizes wage payments to all full-time and part-time employees, at their regular hourly or daily rate of pay, according to the duty schedule they otherwise would have worked on January 21, 2025 when the District was closed due to an emergency caused by inclement weather. This resolution does not apply to temporary or substitute employees unless specifically authorized by the Superintendent.

3. The Board further authorizes premium payments, in addition to those in Paragraph 2 above, to nonexempt employees who were required to work during the emergency closure, at the rate specified in DEA(LOCAL), including time-and-a-half pay where applicable, for actual hours worked on January 21, 2025.

PASSED AND APPROVED BY A MAJORITY OF THE BOARD OF TRUSTEES ON THIS 19th DAY OF FEBRUARY 2025.

APPROVED:	**ATTEST:**
_____	_____
Erin Archer	Keely Cano
President, Board of Trustees	Secretary, Board of Trustees

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Resolution Amending Authorized Representatives of Lake Travis Independent School District to Transmit Funds for Investment in TexPool/TexPool Prime

RECOMMENDED ACTION
Adopt the resolution amending the authorized representatives of Lake Travis Independent School District to transmit funds for investment in TexPool/TexPool Prime.

RATIONALE
TexPool is a local government investment pool governed by the Texas Public Funds Investment Act. The funds are managed conservatively to provide a safe, efficient, and liquid investment option for Texas governments. The administration recommends that Pam Sanchez, Acting Superintendent/Assistant Superintendent for Business Services, Brad Goerke, Director of Finance and Diem Korsgaard, Accountant serve as the authorized representatives.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Brad Goerke - Director of Finance

ATTACHMENTS
TexPool Resolution Amending Authorized Representatives

MEETING DATE
February 19, 2025

Resolution Amending Authorized Representatives

Please complete this form to amend or designate Authorized Representatives. *This document supersedes all prior Authorized Representative forms.*

*** Required Fields**

1. Resolution

WHEREAS,

Lake Travis ISD — Participant Name*

7 8 2 6 9 — Location Number*

("**Participant**") is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("**TexPool / Texpool Prime**"), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

NOW THEREFORE, be it resolved as follows:

A. That the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool / TexPool Prime and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.

B. That an Authorized Representative of the Participant may be deleted by a written instrument signed by two remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool / TexPool Prime account or (2) is no longer employed by the Participant; and

C. That the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant;

List the Authorized Representative(s) of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

1. Pam Sanchez — Name; Asst. Supt. of Business Services — Title

5 1 2 5 3 3 6 0 1 6 — Phone; 5 1 2 5 3 3 6 0 0 2 — Fax; sanchezp@ltisdschools.org — Email

Signature

2. Brad Goerke — Name; Director of Finance — Title

5 1 2 5 3 3 6 0 4 4 — Phone; 5 1 2 5 3 3 6 0 0 2 — Fax; goerkeb@ltisdschools.org — Email

Signature

3. Diem Korsgaard — Name; District Accountant — Title

5 1 2 5 3 3 6 0 1 3 — Phone; 5 1 2 5 3 3 6 0 0 2 — Fax; korsgaadd@ltisdschools — Email

Signature

Form Continues on Next Page

1. Resolution (continued)

4. Name | Title

Phone | Fax | Email

Signature

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name

In addition and at the option of the Participant, one additional Authorized Representative can be designated to perform only inquiry of selected information. *This limited representative cannot perform transactions.* If the Participant desires to designate a representative with inquiry rights only, complete the following information.

Name | Title

Phone | Fax | Email

D. That this Resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool Participant Services receives a copy of any such amendment or revocation. This Resolution is hereby introduced and adopted by the Participant at its regular/special meeting held on the 19 day of February, 2025.

Note: Document is to be signed by your Board President, Mayor or County Judge and attested by your Board Secretary, City Secretary or County Clerk.

Lake Travis ISD

Name of Participant*

SIGNED

Signature*

Printed Name*

Title*

ATTEST

Signature*

Printed Name*

Title*

2. Delivery Instructions

Please return this document to **TexPool Participant Services**:

Email: texpool@dstsystems.com

Fax: 866-839-3291

1-866-TEXPOOL (839-7665) • TexPool.com
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G45340-17 (3/22)

Managed and Serviced by Federated Hermes

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Resolution No. 021925-02 Regarding the Sale of Approximately 0.266 Acres of Land Located on Jingle Dr.

RECOMMENDED ACTION
Adopt Resolution No. 021925-02 approving the sale of approximately 0.266 acres of land located on Jingle Dr.

RATIONALE
The District currently owns a parcel containing approximately 0.266 acres of land located on Jingle Road (see map attached with resolution). The Property has no direct access to public roads and is not usable for any District purpose. The Hawkins Family owns the three parcels of land that surround the District's parcel and has approached the Administration about purchasing the District's parcel. Typically, before land owned by a district may be sold, notice to the general public of the offer of the land for sale must be published and sealed bids to purchase the land must be accepted; however, certain exceptions to the public notice and bidding requirements exist. Here, because the Property is a narrow strip of land that lacks access to public roads and cannot be used independently, it may be sold to the abutting landowner without the requirements of issuing public notice or accepting bids. See Tex. Local Gov't Code §272.001(b)(1). The Property may not be sold for less than fair market value; the fair market value is determined by an appraisal obtained by the district that owns the land, and the appraisal price is conclusive of the fair market value of the land. Administration recommends approval of the Resolution to allow the sale of the Property to the Hawkins Family Partners LP for the price of $15,000.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Robert Winovitch - Director of Facilities and Construction
Chad Crowson - General Counsel

ATTACHMENTS
Resolution No. 021925-02

MEETING DATE
February 19, 2025

Lake Travis ISD Resolution No. 021925-02

LAKE TRAVIS ISD BOARD OF TRUSTEES RESOLUTION AND ORDER FOR THE SALE OF APPROXIMATELY 0.266 ACRES OF LAND ON JINGLE DR.

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

WHEREAS, Section 11.151 of the Texas Education Code provides that the trustees of an independent school district may acquire and sell real property;

WHEREAS, the Lake Travis Independent School District ("District") Board of Trustees is the governing body of the District, a political subdivision of the State of Texas;

WHEREAS, the Lake Travis Independent School District owns a parcel of real property containing approximately 0.266 acres, located off of Jingle Drive, Spicewood, TX 78669, as more particularly described in Exhibit A ("Property");

WHEREAS, the Lake Travis Independent School District Board of Trustees determines that the Property is neither usable nor necessary for District operations or purposes;

WHEREAS, pursuant to Chapter 272 of the Texas Local Government Code, before land owned by a district may be sold, notice to the general public of the offer of the land for sale must be published and sealed bids to purchase the land must be accepted; however, certain exceptions to the public notice and bidding requirements exist;

WHEREAS, pursuant to Texas Local Government Code Section 272.001(b)(1), the public notice and bidding requirements do not apply to narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;

WHEREAS, real property sold in accordance with Texas Local Government Code Section 272.001(c)(1) may be sold to abutting landowners in proportion to their abutting ownership;

WHEREAS, the Property is a narrow strip of land and also lacks access to public roads and cannot be used independently;

WHEREAS, the Hawkins Family Partners, LP ("Buyer") owns three of the four tracts of land that abut the Property and Joseph B. Berti owns the remaining tract of land that abuts the Property;

WHEREAS, Joseph G. Berti has duly executed and delivered to the District a Waiver of Rights to Purchase Surplus Public Land and, therefore, one hundred percent of the Property may be sold to the Buyer without complying with the legal requirements of public notice and acceptance of sealed bids;

WHEREAS, as provided in Texas Local Government Code Section 272.001(b), the Property may not be sold for less than fair market value unless the sale is with one or more abutting property owners who own the underlying fee simple.; the fair market value is determined by an appraisal obtained by the District,

WHEREAS, the District has obtained an appraisal that indicates that the fair value of the Property is FIFTEEN THOUSAND DOLLARS AND NO CENTS ($15,000);

WHEREAS, the Buyer has agreed to purchase the Property for FIFTEEN THOUSAND DOLLARS AND NO CENTS ($15,000); and

WHEREAS, the Administration recommends sale of the Property to Buyer for FIFTEEN THOUSAND DOLLARS AND NO CENTS ($15,000).

NOW THEREFORE, BE IT RESOLVED AND ORDERED BY THE LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES:

1. That all of the above paragraphs are incorporated into and made part of this Resolution and Order;

2. That the Property is determined and declared to be surplus property that is neither usable nor necessary for District operations or purposes;

3. That the District's Board of Trustees has determined fair value based on the appraisal price obtained by the District;

4. That the District is hereby authorized to sell the Property to the Buyer, or its successors and/or assigns, for a purchase price of FIFTEEN THOUSAND DOLLARS AND NO CENTS ($15,000); and

5. That the President of the Board of Trustees is hereby authorized and directed to execute the deed conveying the Property, and that the Superintendent or his designee is authorized to take all additional actions necessary or advisable to effectuate the conveyance of the Property to Buyer, including without limitation, negotiation of and execution of a Purchase Contract and any other documents, instruments, or agreements involved or necessary for the closing of the transaction.

PASSED, APPROVED and ADOPTED by the Board of Trustees of the Lake Travis Independent School District this _____ day of _____, 2025.

By:_____

Erin Archer
President, Board of Trustees

Attest: _____
Keely Cano
Secretary, Board of Trustees

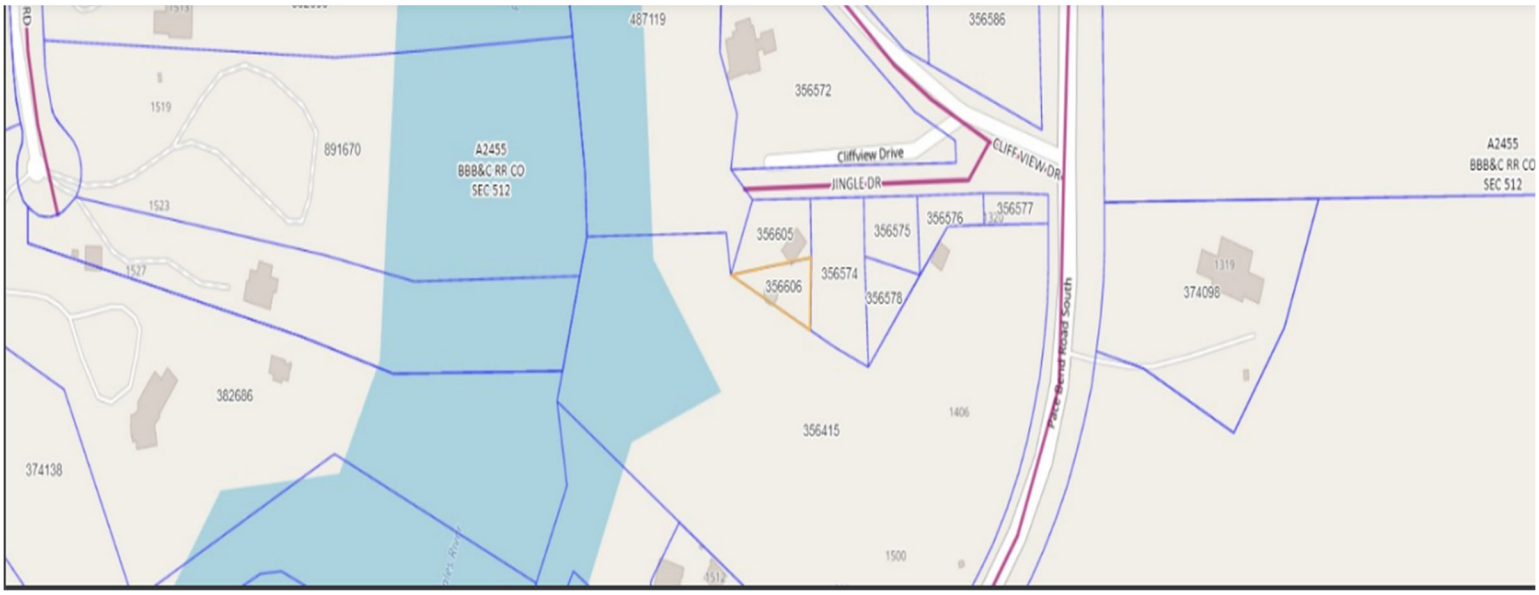
EXHIBIT A
TO RESOLUTION NO. 021925-02

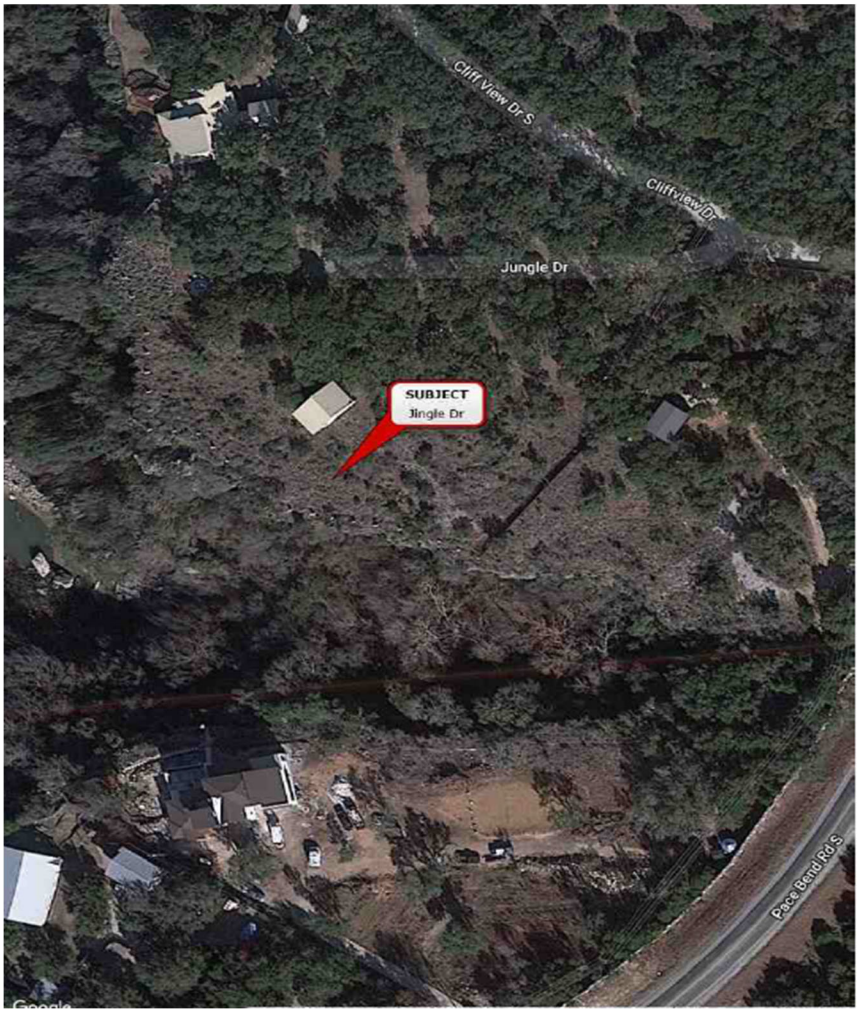
Legal Description of Property

ABS 2459 SUR 52 COLLIER J A ACR .240

A parcel containing approximately 0.266 acres of land located on Jingle Road, which is located off of Cliff View Drive, as depicted in Attachment 1 hereto (TCAD Property ID: 356606). The final metes and bounds of the Property to be determined by a survey accepted by the District.

Attachment 1 to Exhibit A
to Resolution No. 021925-02





AGENDA ITEM ACTION SHEET

AGENDA ITEM
Architect Agreement between Lake Travis ISD and LPA, Inc. for Technology Building Addition Project

RECOMMENDED ACTION
Approve the architect agreement between Lake Travis ISD and LPA, Inc. for the Technology building addition project and authorize the Acting Superintendent or designee to execute the agreement.

RATIONALE
In December 2022, the Board approved a list of Construction Professional Services (A/E Pool) that included 22 architecture firms. LPA, Inc. was selected to design the 1,380 square foot technology addition to the Distribution Building based on their experience in similar K-12 projects and for the professionals serving on the project team. The administration is seeking approval to execute an agreement with LPA, Inc.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
LPA, Inc. B101-2017
LPA, Inc. Exhibit A

MEETING DATE
February 19, 2025

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 19th day of February in the year 2025
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Lake Travis ISD
3322 Ranch Rd. 620 S.
Austin, TX 78738
Telephone: 512-533-6000

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

LPA, Inc.
1811 S. Alamo Street, Suite 100
San Antonio, TX 78204
210-829-1737

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

Technology Building Addition

The Owner and Architect 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.

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2 ARCHITECT'S RESPONSIBILITIES

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6 COST OF THE WORK

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10 MISCELLANEOUS PROVISIONS

11 COMPENSATION

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13 SCOPE OF THE AGREEMENT INCLUDING EXHIBITS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the information and assumptions set forth in this Article 1 and other documents listed in this Agreement as exhibits in Section 13.2, including any individual project addendums.

The Architect will provide comprehensive architectural and engineering services, as applicable, to include the design of the Project, creation of Construction Documents and construction contract administration for the Project in accordance with the Owner's Request for Proposals, Architect's Proposal, the Owner's Program documents, this Agreement with all exhibits, and all applicable laws.
(*For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

LTISD 2022 Bond Program

§ 1.1.2 The Project's physical characteristics:
(Paragraph deleted)
Technology Building Addition to include: a 1,500 sf addition to the deployment room at the LTISD Distribution Building, removal of the transaction window at B11 Reception, reconfiguration of the break room area to accommodate more seating and storage and the addition of a door to the NOC and demising wall.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

$560,000

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User Notes: (2035368274)

§ 1.1.4 The Owner's anticipated dates for commencement of design, construction and of Substantial Completion and Final Completion of the Work are set forth as follows:

.1 Design phase milestone dates, if any: 100% CDs to be issued 02/15/2025

.2 Notice to Proceed/Construction commencement date: 08/15/2025

.3 Substantial Completion and Final Completion dates: Substantial Completion; 05/15/2026

.4 Other milestone dates:
See Project addendums

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

TBD

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not Applicable

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

Not applicable.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Robert Winovitch
Director of Facilities
winovitchr@ltisdschools.org

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Not applicable

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1
(Paragraphs deleted)
Civil Engineer

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

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User Notes: (2035368274)

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

Federico Cavazos
LPA, Inc.
1811 S. Alamo Street, Suite 100
San Antonio, TX 78204
fcavazos@lpadesignstudios.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

.4 Other, if any: Technology and Security. Civil is excluded.
(List any other consultants and contractors retained by the Architect.)

§ 1.1.11.2 Consultants retained under Additional Services:

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Exhibit B – LPA Scope of Services 12/20/24. However, to the extent anything within Exhibit B conflicts with other terms in this Agreement, the terms of the B101 prevail.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect may adjust the schedule as mutually agreed upon by the parties, which may include any agreed upon adjustments (either upward or downward) to the Architect's services and the Architect's compensation and to be adjusted by amendment to this Agreement as approved by the Owner, including any changes required to be approved by the Owner's Board of Trustees.

§ 1.3 Intentionally deleted.

§ 1.3.1 Intentionally deleted.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement, including any exhibits, if applicable, that are necessary and reasonably inferable to complete the Project, each phase of the Project. The Architect shall allocate adequate time, personnel, and resources as necessary to perform its services. The Architect shall review the program furnished by the Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with the Owner. The Architect shall include in the Project all components of the Owner's program, as determined by the Owner, unless specific written authorization to delete a component is received from the Owner. Any civil, structural, mechanical, or electrical engineering plans and specifications or opinions of probable costs for construction must be prepared by or under the supervision of a registered professional engineer or a registered architect, whichever is applicable. The Architect shall provide to the Owner all plans, specifications, drawings and Construction Documents within the Architect's scope of services and provide such documents in electronic format. If requested by the Owner, the Architect shall assist the Owner in reviewing responses to competitive procurement documents.

§ 2.2 The Architect agrees and acknowledges that the Owner is entering into this Agreement in reliance on the Architect's competence, qualifications and its professional abilities with respect to performing the Architect's services, duties and obligations under this Agreement. The Architect shall perform its services in accordance with the

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professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license as set out in Texas Civil Practice and Remedies Code Section 130.0021("Standard of Care"). The Architect shall diligently perform all services under this Agreement and shall strive to further the interest of the Owner in accordance with the Owner's program and requirements and procedures. All of the Architect's services shall be performed as expeditiously as is consistent with said standards and the orderly progress of the services. The Architect's services shall be performed in accordance with the Standard of Care. The Owner shall have the right to reject any of the Architect's services because of any material errors or omissions in the plans, drawings, specifications, and other materials prepared by the Architect or its consultants. Neither acceptance nor approval of the Architect's services by the Owner shall relieve the Architect of any of its professional duties or release it from any liability, it being understood that the Owner is, at all times, relying upon the Architect for its skill and knowledge in performing the Architect's services. Promptly after the execution of this Agreement, the Architect shall prepare and submit, for the Owner's approval in writing, a detailed schedule for the performance of the Architect's services to meet the Project dates as set forth in this Agreement. The Architect's schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which the Architect has control shall not be exceeded without the express written approval from the Owner. The Architect knows of no obligations, commitments, or impediments of any kind that will limit or prevent performance by the Architect of its services. The Architect hereby agrees to correct, at its own cost, any of its services and the services of its consultants that do not meet the Standard of Care set forth in this Agreement. Time is of the essence in this Agreement, subject to the Standard of Care as defined herein.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 The Architect shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project or otherwise be contrary to the Owner's policies and procedures or applicable law, including any conflict of interest provisions.

§ 2.5 Prior to performing services on the Project under this Agreement, the Architect shall procure and maintain insurance of the type and amount set forth in this Section 2.5 and in Exhibit A, attached and incorporated herein, to protect the Architect and Owner from claims arising out of the performance of the professional services under this Agreement and caused by negligent acts, errors, or omissions, of the Architect, such insurance to be in a form approved by the Owner with an effective date prior to the beginning of design by Architect. The Architect shall maintain its insurance in full force and effect during the term of this Agreement and after the completion of services under this Agreement until not less than two (2) years from the final completion of all construction of this Project, if commercially available, as to workers compensation, comprehensive general liability, and comprehensive automobile liability, and not less than eight (8) years (or ten (10) years as allowed by Texas Civil Practice and Remedies Code Section 16.008) from the final completion of all construction of this Project as to errors and omissions insurance. Notwithstanding the foregoing, nothing contained herein shall limit or reduce the number of years of any limitations period set forth in Chapter 16 of the Texas Civil Practices and Remedies Code or any other statute that provides a time frame for bringing a claim. If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file with the Owner a new certificate of coverage and endorsements, and if requested by the Owner, also a copy of the policy, showing that coverage has been extended. The Architect shall, if allowed by law, add the Owner as an additional insured under its policies for comprehensive general liability, comprehensive automobile liability, and umbrella liability. Insurance shall be obtained from companies authorized to do business in the State of Texas by the Texas Department of Insurance with the rating indicated in Exhibit A. Prior to the commencement of services under this Agreement, the Architect shall provide the Owner with a copy of all certificates and endorsements for the insurance required under this Agreement and if requested by the Owner, a copy of all policies.

§ 2.5.1 Intentionally deleted.

§ 2.5.2 Intentionally deleted.

§ 2.5.3 Intentionally deleted.

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§ 2.5.4 Intentionally deleted.

§ 2.5.5 Intentionally deleted.

§ 2.5.6 Intentionally deleted.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured. 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. All insurance coverage shall be issued on an Occurrence form (except Professional Liability insurance, which may be issued on a "Claims Made" form if an Occurrence form is not commercially available). Certificates must include a 60-day notice of cancellation to any of the policies or equivalents specifically naming the Owner. A waiver of subrogation clause in favor of the Owner shall be attached to the Workers Compensation, General Liability and Automobile Liability. All Engineers or other Consultants retained by the Architect shall carry and produce evidence of the same amounts of insurance coverage under the same conditions described above, and of a type acceptable to the Owner, unless different coverage is agreed to in advance by the Owner.

§ 2.5.8 The Architect's failure to comply with the insurance requirements set forth in Section 2.5 shall constitute a breach of this Agreement by the Architect and entitles the Owner to declare the Agreement void if the Architect does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services, as applicable to the individual Project, consist of those described in this Article 3, other provisions of this Agreement and otherwise designated as Basic Services elsewhere in this Agreement and include, without limitation, usual and customary design, structural, mechanical, electrical, plumbing, lighting, architecture, interiors, and consulting services, unless otherwise revised by Section 4.1. Without limitation, Basic Services shall further include any services designated as such by Article 4.1. The Architect shall not be relieved of any obligation to perform in accordance with the Standard of Care, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

§ 3.1.1 The Architect shall perform and manage the Architect's services and administer the Project in accordance with this Agreement as amended for the Project and in accordance with the AIA Document A201-2017™, General Conditions of the Contract for Construction, as amended for the Project (sometimes referred to as the "General Conditions of the Contract"), consult with the Owner and Owner's designated representative, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner through the issuance of progress reports to Owner and Contractor (where applicable, the term "Contractor" shall be inclusive of the Construction Manager), as more specifically defined hereafter. Architect agrees that the AIA Document A201-2017™, as amended for this Project, may be subject to subsequent amendments based upon negotiations between Owner, Architect and Contractor. As a condition of further service, Architect shall provide to Owner a signed statement stating Architect's agreement to adhere to any such negotiated amendments.

.1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, the Architect shall make presentations to Owner's Board of Trustees to present Schematic Design, Design Development and Construction Documents as requested by the Owner.

.2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees or designee, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board of Trustees in the further development of the design, provided that nothing herein shall relieve Architect of responsibility for providing its services in accordance with the Standard of Care.

§ 3.1.2 As part of the Architect's Basic Services, the Architect shall review the information provided by the Owner relative to the Project; shall visit and observe the site where the Project is to be located and the surroundings and

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adjacent areas; observe any conditions at the site affecting or that might affect the Project; evaluate the location and nature of the Work to be performed; review the geotechnical reports for the nature of the ground and subsoil, the form and nature of the site, and; familiarize itself with the local conditions under which the Project is to be constructed and the construction work is to be performed; observe the location and character of existing or adjacent work or structures; and assess the general character and accessibility of the site. Without limiting any other obligations of the Architect set forth in this Agreement, the Architect shall make recommendations to the Owner for the location of any geotechnical testing if required for the Project. The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants through the Owner's designated representative. The Architect reasonably may rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants; however, the Owner does not warrant or guarantee the accuracy or completeness of such services or related information, or that any documents or information otherwise provided to the Architect accurately reflects the conditions at the site or of the Project. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 The Architect and the Owner agree that the initial schedule for performance of the Architect's services are as set forth in this Agreement. The schedule includes dates for the commencement of construction and the dates for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval and/or coordination of submissions by authorities having jurisdiction over the Project. Subject to any agreed upon changes to the dates established in this Agreement and except for any reasonable cause shown to have actually affected such dates, time limits established by the schedule shall not be exceeded by the Architect. With the Owner's prior written approval, for reasonable cause, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If Contractor is a Construction Manager-at-Risk, then the Architect shall assist the Construction Manager-at-Risk in the preparation and periodic update of the Project schedule.

§ 3.1.4 Matters of aesthetics are within the Owner's sole discretion. Except as provided in this Agreement or the Contract for Construction between the Owner and the Contractor, the Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Owner shall provide the Architect with information required by 19 Texas Administrative Code, Chapter 61, subchapter CC and Texas Health and Safety Code Section 341.065, if applicable to this Project. The Architect shall review and shall perform its services in compliance with applicable national, federal, municipal, and state of Texas laws, regulations, codes, ordinances, orders, and with those of any other body having jurisdiction in effect at the time of performance and as reasonably interpreted. The Architect shall review and be responsible for compliance with laws, codes and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations, and rules of the Owner including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, pornography, harassment, and tobacco on District property), and fraud and financial impropriety. If applicable, the Architect shall certify that it has reviewed the standards contained in 19 Texas Administrative Code, Chapter 61, subchapter CC, and has complied with the Standard of Care in executing the Construction Documents. The Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, federal regulations interpreting the Americans With Disabilities Act, Texas Government Code Chapter 469, and all requirements or standards of the Texas Department of Licensing and Regulation. The Architect shall make any and all revisions to the Drawings until the Building and/or Project receives approval through the process defined by the Elimination of Architectural Barriers program of the Texas Department of Licensing and Regulation. The Architect shall, at appropriate times, contact the governmental authorities required to coordinate and/or approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. Design of the extension of utility services necessary for completion of the project, but not provided by entities providing utility services to the Project, shall be conducted by the Architect. The cost of construction of the lines designed by the Architect shall be considered a Cost of the Work and the Architect shall be compensated for such design work as a Cost of the Work. In the event that the utility extension work is to be issued as a separate package from the Project for bidding or construction, or is to be completed on a timeline that is different from the Project, the Architect may be entitled to additional services instead of including

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such work within the Cost of the Work. Requests for additional services shall be submitted in writing by the Architect and approved in writing by the Owner prior to the time such services are performed.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for coordination and/or approval of governmental authorities having jurisdiction over the Project.

3.1.7 The Architect is responsible for hiring and coordinating the work of all of its consultants so that their services are appropriate for and adequately incorporated into the design of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by the Architect of any consultant for the Project to which the Owner has reasonable objection. The Architect, however, shall not be required to contract with any consultant to which it has a reasonable objection. The Architect shall pay for its consultants' services out of its fees. The Owner is not responsible for any consultant fee or costs unless expressly agreed to in writing.

3.1.8 The Architect's senior principal or other representative as defined herein who is responsible for managing the Project shall not be changed without the prior written approval of the Owner. The day-to-day Project team will be led by the senior principal or other representative as identified herein unless otherwise directed by the Owner or prevented by factors beyond the control of the Architect.

3.1.9 The Architect shall not engage in any activity or course of conduct which is detrimental to the Project's best interest. The Architect shall take reasonable steps necessary to seek compliance so that the Construction Documents are adhered to by the Contractor. The Architect, however, shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for job site safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's decisions on matters relating to aesthetic effect shall be final.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review and conform to the Owner's approved Project program, preliminary design, budget and schedule of phases of work and other information furnished by the Owner, and shall review and follow all laws, codes, and regulations applicable to the Architect's services, as set forth in Section 3.1.5 or elsewhere in this Agreement.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, and preliminary design, schedule, budget for the Cost of the Work (limited to project elements within the Architect's scope), Project site, and the proposed procurement and delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner in writing of (1) any inconsistencies discovered in the Initial Information or other information provided to or obtained by the Architect, and (2) other information or consulting services that may be reasonably needed for the Project. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule, and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easement or rights-of-way which may interfere with Owner's Project. As soon as practicable after execution of this Agreement and, if possible, before Owner's Board of Trustees designates a method of construction contract procurement, the Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner in writing of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

§ 3.2.3 The Architect shall present its written preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, conforming all standards and work to be done with the Owner's budget, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach a written understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon in writing with the Owner, the Architect shall prepare and present for the Owner's approval a written preliminary design illustrating the scale and relationship of the Project components. Before proceeding to the Design Development Phase, the Architect shall obtain the Owner's written

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acceptance of the Design Documents and Owner's approval of the Architect's preliminary construction cost estimate and any recommended changes to the schedule; provided, however, this approval shall not relieve the Architect of the Architect's responsibility to perform its services in accordance with the Standard of Care.

§ 3.2.5 Based on the Owner's approval of the preliminary design and Owner's schedule and budget for the Cost of the Work, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall establish the conceptual design of the Project and illustrate the scale and relationship of the Project components. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. The Schematic Design Documents shall show major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing and recommending a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.5.2 The Architect shall consider, and, if applicable, consult with the Construction Manager at Risk regarding the value of alternative materials, building systems and equipment, together with other considerations based on program/preliminary design and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 When the Project requirements have been sufficiently identified, including Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities, the Architect, and if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3. To the extent the Owner has stipulated construction budget limitations for the Project, such estimated Cost of Work shall not exceed the Owner's budget limitations, unless agreed to in writing by the Owner.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner by the date set forth in the Initial Information; advise the Owner in writing, that documents are in compliance with applicable law, including 19 Texas Administrative Code Chapter 61, Subchapter CC, if applicable, and request the Owner's approval. Architect shall not proceed to the Design Development Phase without the approval of Owner's Board of Trustees or the Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility to perform its services in accordance with the Standard of Care. Architect shall bear full responsibility for any and all resulting excess costs incurred by Architect in proceeding without required approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents, shall refine the Project design, and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work and shall conform the estimated Cost of Work to the Owner's budget. Such estimate of the Cost of the Work shall not exceed the Owner's limitations, unless agreed to in writing by the Owner.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner by the date set by the Owner, advise the Owner in writing that documents are in compliance with applicable law, including 19 Texas Administrative Code Chapter 61, Subchapter CC, if applicable, and of any and all adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

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3.3.4 Before proceeding to the Construction Document Phase, the Architect shall obtain the Owner's written approval and acceptance of the Design Development Documents and updated budget for the Cost of the Work; provided, however, this approval shall not relieve the Architect of the Architect's obligations, responsibilities and/or liability to provide its services in accordance with the Standard of Care. The Architect shall bear full responsibility and all resulting excess costs incurred by the Architect in proceeding without the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work; the Owner's educational program; and any educational specifications and requirements set forth in 19 Texas Administrative Code, Chapter 61, Subchapter CC, the Architect shall prepare Construction Documents for the Owner's approval. "Construction Documents" means all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth, in detail, the requirements of construction of the Project. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications, schedules, diagrams, and all other documents as are necessary to construct the Project, setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Construction Documents shall reflect all agreements between the Owner and the Architect concerning the Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. The Construction Documents shall provide information as is reasonably necessary for the use of the Construction Documents by the Contractor and those in the building trades and construction industry to perform the Work and shall include all documents required for regulatory agency approvals. The Construction Documents shall set forth in detail the requirements for construction of the Project that comply with applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents including the current interpretation of Title IX, Texas Accessibility Standards, and regulations promulgated by the Texas Education Agency (TEA) for facility standards. The Owner and the Owner's authorized representatives shall review all Construction Documents and must provide written approval of same prior to release of the documents for competitive procurement or negotiation purposes. Approval of the Construction Documents by the Owner shall not relieve the Architect of any of its obligations, responsibilities, or liability to the Owner under this Agreement. The Owner and Architect acknowledge that in order to construct the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project, and where applicable, include information related to trench excavation safety. Outdoor lighting fixtures, if any, shall meet the statutory energy conservation and light pollution standards established by the State of Texas Health and Safety Code. All ventilation and indoor air quality systems designed by the Architect shall meet the indoor air quality voluntary guidelines established by the State of Texas Health and Safety Code.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner, and, if applicable, the Owner's legal counsel, in the development of (1) bidding and procurement information which describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) as amended for the Project. After consultation with the Owner, the Architect shall also compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. As required by law, all bid or proposal documents and contracts shall include, if applicable, all required information related to trench excavation safety. Texas Health and Safety Code Section 756.021 *et seq*. Proposal documents shall contain the prevailing wage rates in accordance with Chapter 2258 of the Texas Government Code; the adopted prevailing wage rates for the Project are indicated in the Contract Documents. The Architect shall include in the Project specifications the requirement that payment and performance bonds are to comply with the requirements of the Texas Insurance Code Chapter 3503 and the Texas Government Code Chapter 2253; that all insurance companies or sureties are licensed to do business in the State of Texas; and, where bond amounts exceed $100,000, insurance companies or sureties hold a certificate of authority from the United States Secretary of the Treasury; or, reinsurance for liability in excess of $100,000 from a reinsurer authorized and admitted as a reinsurer in the State of Texas and that is a holder of a certificate of authority

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from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. The Owner and the Architect reserve the right to rely on the United States Secretary of the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work. To the extent the Owner has stipulated a construction budget limitation for the Project, as may be amended pursuant to Section 3.4.1, such estimated Cost of the Work shall not exceed the Owner's budget limitations, unless agreed to in writing by the Owner. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided herein, and, in doing so, shall notify Owner, in writing, of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendations but shall decide, in its discretion, what adjustments to make.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval by the date established by the Owner. Architect shall not proceed to the Procurement Phase without the approval of Owner's Board of Trustees, or Board designee; provided, however, this approval shall not relieve Architect of Architect's responsibility to perform its services in accordance with the Standard of Care. Architect shall bear full responsibility for any and all resulting excess costs incurred by Architect in proceeding without required approval.

3.4.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any changes in the Work, unless those changes do not involve an adjustment in the Contract Sum or Contract time, without prior written consent of the Owner. The Architect shall be liable to Owner for any damages arising from or caused by any changes to the Work made or approved by the Architect without the Owner's prior written consent.

3.4.7 Pursuant to 19 Texas Administrative Code §61.1036, the Architect shall sign and seal the Construction Documents and shall execute the Certification of Project Compliance form developed by the Texas Education Agency.

3.4.8 Architect shall submit the Construction Documents for review and approval to the Texas Department of Licensing and Regulation any time the renovation, modification, or alteration of the Work has an estimated construction cost of $50,000 or more and shall notify Owner of same. Architect shall not allow Contractor to file an application with any local governmental entity for a building construction permit until after Architect's submission to the Texas Department of Licensing and Regulation.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

As applicable, the Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents or at such time as is appropriate for the Project, the Architect shall assist the Owner, and if applicable, the Owner's legal counsel in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction. The Owner will select the method that provides the best value for the Project.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents. As used herein, the terms "bid," "Bid," "Bidding," and "Bidding Documents" shall include and mean any form of competitive procurement selected by the Owner and the applicable documents related thereto under Chapter 44 of the Texas Education Code and Chapter 2269 of the Texas Government Code.

§ 3.5.2.2 The Architect shall assist the Owner, only if applicable, in bidding the Project by:

- **.1** if requested by the Owner, assist in preparation of bid documents;
- **.2** procuring the reproduction of Bidding Documents for distribution to prospective bidders;

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.3 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

.4 organizing and conducting a pre-bid conference for prospective bidders;

.5 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda;

.6 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner;

.7 organizing and participating in selection interviews with prospective contractors and

.8 if requested by Owner, participating in negotiations with prospective contractors, and subsequently preparing a summary report of negotiating results, as directed by Owner

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders. The Architect shall review, in conjunction with the Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction with Owner's overall budget for the Project.

§ 3.5.3 Proposals

§ 3.5.3.1 The Architect shall assist the Owner in obtaining construction services and shall assist the Owner in awarding and preparing contracts for construction.

§ 3.5.3.2 If requested by the Owner, the Architect shall assist the Owner in obtaining proposals
(Paragraphs deleted)
by participating in negotiations with prospective contractors and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors. The Architect shall review, in conjunction with Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction within Owner's overall budget for the Project.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended for the Project and as specified in Section 3.1.1 herein. While on Owner's property and throughout Architect's services under this Agreement, the Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and prohibitions against fraud and financial impropriety.

§ 3.6.1.2 The Architect shall be a representative of the Owner and shall advise and consult with the Owner during the Construction Phase Services, attend weekly meetings with the Contractor, and issue written project reports. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and subject to any limitations in law applicable to public school districts. Additionally, except as expressly set forth in this Agreement or the General Conditions of the Contract, the Architect shall not have the authority to approve any changes in the Work without the written approval by the Owner and in no event shall the Architect have the authority to approve any change that would modify the Contract Time or the Contract Sum/Guaranteed Maximum Price, as applicable. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other

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persons or entities performing portions of the Work. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates upon final completion of the Construction Phase after the Architect determines that the Contractor has completed all work required by the Contract Documents including all punch list deficiencies and completion of one-year warranty phase services.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at least once per week (or more often, in accordance with industry standards or Owner's reasonable request) and at other intervals appropriate to the stage of construction, to (1) observe the progress and quality of the Work completed, (2) to reject any observed non-conforming Work, (3) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (4) to guard the Owner against defects and deficiencies in the Work; (5) to determine 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 and on time; and (6) to document the progress of the Work, in written and photographic form as appropriate. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Architect will attend job site meetings as requested.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with Contract Documents and shall notify Owner of all corrective actions taken or recommended. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. Performance of any additional inspection or testing, which would result in additional cost to the Owner, shall require advance notice to and written approval of the Owner. However, neither this authority of the Architect, 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 to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The testing or inspections required by this Section are subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 3.6.2.3 The Architect shall interpret and make recommendations to Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 3.6.2.5 The Architect shall promptly render initial written recommendations on Claims, disputes and other matters in question between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall observe the progress of the Work, evaluate, review and certify the amounts due the Contractor and shall issue certificates in such amounts, if such amounts are validly requested, within seven days of receipt of the Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results

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of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect. The term "certify" as used by the Architect shall mean to state or declare a professional opinion in accordance with the Standard of Care, of conditions known at the time such certifications are made. The Architect's certification of certain information or conditions in no way relieves the Contractor from meeting requirements imposed by contract or other means, including commonly accepted industry standards.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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 except as otherwise required by this Agreement, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall prepare a listing of all required submittals for the Project and distribute to the Owner and the Contractor. The Architect shall review the Contractor's proposed submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, 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. The Architect shall promptly report in writing to the Contractor and the Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roofing, foundations, outward appearance, color schemes, floor plans, building materials, or equipment without the Owner's prior written consent.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided that the Owner does not guarantee or warrant the accuracy of same.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information at no additional charge to the Owner, and shall incorporate such changes in closeout documents furnished to the Owner at the completion of the Project.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

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§ 3.6.5 Changes in the Work

§ 3.6.5.1 With notice to and consent from the Owner, the Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum, or an expenditure of contingency funds or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified as Basic Services of the Architect.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.5.3 The Architect shall prepare Drawings, Specifications, and other documentation and supporting data, and provide other services in connection with Proposal Requests; Architect's Supplemental Instructions; Change Orders; Allowance Authorization Expenditures; and Construction Change Directives at no additional expense to the Owner, whether initiated by the Owner, the Contractor or the Architect.

§ 3.6.5.4 The Architect shall prepare a set of reproducible record drawings and record specifications showing significant changes made during construction based upon marked-up prints, drawings and other data furnished by the Contractor to the Architect or based on the Architect's revisions. The drawings and specification records furnished by the Architect to the Owner shall be in native drawing format and be accompanied by a printed copy of the drawings and specifications.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct site observations to determine the date or dates of Substantial Completion and the date of Final Completion;

.2 issue Certificates of Substantial Completion and of Final Completion, using Owner's designated forms;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor;

.4 issue a final Certificate for Payment based upon a final site observation indicating that the Work complies with the requirements of the Contract Documents; and

.5 for any Work that exceeds $50,000, Architect shall schedule and ensure completion of inspections with the Texas Department of Licensing and Regulation as required by Texas Government Code Section 469.105.

§ 3.6.6.2 The Architect's site observations shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect's site observations shall continue until Final Completion is achieved and any warranty work is complete and accepted by the Owner.

§ 3.6.6.3 When the Work is found to be substantially complete, and when the Work is finally complete, the Architect shall inform the Owner in writing about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. As a condition to the Project being considered Substantially Complete, the Architect shall obtain the certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.4.7.3 above.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of claims, liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance, including, without limitation, to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner.

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§ 3.6.6.6 After written notification, regarding unsatisfactory performance and ten (10) day opportunity to cure, the Owner may withhold payments to the Architect, in an amount reasonable to cover estimated legally recoverable damages, to secure performance of Architect's services and obligations under any part of this Agreement.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services

§ 4.1.1 As applicable, the Architect shall furnish or provide the services below as Basic Services without additional compensation unless it is indicated below to be an Additional Service, in which case the Additional Service, if requested by the Owner and approved in writing in advance, shall be compensated to the Architect as provided in Section 11.2.

Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Architect – Basic Service
§ 4.1.1.2 Multiple preliminary designs	Architect – Basic Service
§ 4.1.1.3 Measured drawings	Architect – Supplemental Services
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Architect – Basic Service
§ 4.1.1.6 Building Information Model management responsibilities	Architect – Basic Service
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect – Basic Service
§ 4.1.1.8 Civil engineering	Owner
§ 4.1.1.9 Landscape design	Owner
§ 4.1.1.10 Architectural interior design	Architect – Basic Service
§ 4.1.1.11 Value analysis	Architect – Basic Service
§ 4.1.1.12 Detailed cost estimating	Not provided
§ 4.1.1.13 On-site project representation	Not provided
§ 4.1.1.14 Conformed documents for construction	Architect – Basic Service
§ 4.1.1.15 As-designed record drawings	Architect – Basic Service
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Intentionally Deleted	Intentionally Deleted

(Row deleted)

§ 4.1.1.21 Telecommunications/data design	Architect – Basic Service
§ 4.1.1.22 Security evaluation and planning	Architect – Basic Service
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25 Fast-track design services	Not provided
§ 4.1.1.26 Alternate bid items	Architect – Additional Service

(Row deleted)

§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Warranty Phase Support Services	Not Provided

(Row deleted)

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§ 4.1.1.30 Land Surveying	Owner
§ 4.1.1.31 Geotechnical Services	Owner
§ 4.1.1.32 Environmental Services	Owner
§ 4.1.1.33 Graphics and Signage	Not Provided
§ 4.1.1.34 Permitting	Architect – Basic Service
§ 4.1.1.35 Space Schematics/Flow Diagrams	Architect – Basic Service
§ 4.1.1.36 Owner-Supplied Data Coordination	Owner
§ 4.1.1.37 Structural	Architect – Basic Service
§ 4.1.1.38 Mechanical, Electrical, Plumbing	Architect – Basic Service
§ 4.1.1.39 Traffic Design	Owner
§ 4.1.1.40 TAS Review / Inspection	Architect – Basic Service / Reimbursable

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1

(Paragraphs deleted)

Intentionally deleted.

§ 4.1.2.2 Intentionally deleted.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 Intentionally deleted.

§ 4.2 Architect's Additional Services

Additional services beyond those described as Basic Services in this Agreement may be provided after execution of this Agreement, without invalidating the Agreement if agreed to in writing by the Owner before performance of any such services. The Owner shall have no obligation to pay for any Additional Services performed unless and until the Owner agrees to such Additional Services in writing and to the amount of increase in compensation for same and signed by the Owner. If the Owner deems that all or a part of such Additional Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. The Architect shall not be entitled to an upward adjustment in compensation or Reimbursable Expenses due to the fault or error of the Architect or Architect's consultants, but may be subject to a downward adjustment in compensation. .

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect may be entitled to an adjustment and shall not proceed to provide the following services until the Architect receives the Owner's written authorization. Subject to the limits and requirements set forth in this Agreement, the following would be considered Additional Services:

.1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a significant change in the scope of the Project including but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, except when such change is required due to an error or omission of the Architect or any of the Architect's consultants;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared and approved Instruments of Service necessitated by enactment or revision of codes, laws, or regulations, or official interpretations ;

.4

(Paragraphs deleted)

Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; and

(Paragraph deleted)

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.5 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2
(Paragraphs deleted)
Intentionally deleted.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 Five (5) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor;
.2 Five (5) Visits to the site by the Architect during construction as required by Section 3.6.2.1;
.3 Five (5) site observations for each portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents; and
.4 Five (5) site observations for each portion of the Work to determine final completion.

§ 4.2.4 Intentionally deleted.

§ 4.2.5 Intentionally deleted.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall consult with the Architect regarding the Owner's contemplated objectives, schedule constraints and criteria, requirements for and limitations on the Project site requirements, and will provide timely information as reasonably may be necessary for the Architect to provide Architectural services. The Architect shall be responsible for having knowledge of and adhering to any building code authority that may be applicable to the Project, including, without limitation, the requirements of the Texas Administrative Code.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Except as otherwise delegated to administration, Owner's Board of Trustees, by majority vote at a properly called meeting, is the only representative of the Owner, a public independent school district, having the power to enter into a contract, approve changes in the Scope of the Work, approve a change resulting in an increase to the Contract Sum or Guaranteed Maximum Price of $100,000 or more, approve a change in Owner's budget, or to agree to an extension of the date of Substantial Completion or Final Completion. The Owner designates Paul Norton, Superintendent, to sign contracts and other documents and to act on the Owner's behalf with respect to the Project. The Owner designates Robert Winovitch as its representative for day-to-day responsibilities of the Owner and for decision making authority as delegated by the Board and Superintendent. The Owner shall render decisions and approve the Architect's submittals in a reasonably timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 Upon written request of the Architect, the Owner shall furnish surveys known to Owner describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. Other than the metes and bounds noted in the legal description of the site or the survey, the Architect shall not be entitled to rely on the accuracy of information furnished by the Owner. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes, or pipelines, or the presence or absence of easements. Architect shall review this information and shall provide to Owner a written request for additional information needed, if any, for Architect to adequately perform services hereunder. Upon receipt of this request, the Owner will procure and provide to the Architect the information requested.

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§ 5.5 The Owner may furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The parties may agree for this service to be provided by the Architect.

§ 5.6 The Owner shall provide the services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 Intentionally deleted.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents to be furnished by the Owner. To the extent that tests, inspections, and reports are not required by law or the Contract Documents to be furnished by Owner, but are deemed necessary by the Architect or Owner, then they shall be furnished by Architect, unless Architect receives Owner's written permission to charge Owner for the services or Owner agrees to separately contract for the services.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner determines may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Architect acknowledges that it is the leader of the design team and is responsible for the design of the Project. Therefore, Owner shall be entitled to rely on the Construction Documents, services, and information furnished by the Architect. This section shall not relieve Architect of any responsibility or liability for the performance of Architect's contracted services on the Project.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Intentionally deleted.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the compensation to the Architect shall be based on the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall be based on the actual amounts paid for the Cost of the Work (as defined in the construction contract); and the Contractors' general conditions costs, overhead and profit (collectively "Construction Costs"), which may be a lump sum or Guaranteed Maximum Price. To the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include elements of the Project designed by Architect but not accepted by the Owner. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner, including

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purchase of equipment, furniture, fixtures, or pre-fabricated items, and does not include any amounts budgeted or included in allowances or contingencies unless actually paid by the Owner to the Contractor.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under this Agreement. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. If the Architect's design is determined to exceed Owner's budget, then Architect agrees to redesign the Project at Architect's expense and as part of Architect's Basic Services, to meet Owner's budget.

§ 6.3 The Architect, and the Construction Manager at Risk, if applicable, shall prepare a preliminary estimate of the Cost of the Work, which shall incorporate Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and, if applicable, the Construction Manager at Risk, shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with Owner, and, if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project with the prior consent of Owner's Board of Trustees or designee; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential elements of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's Budget. If the Architect is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendation, but shall decide, in its discretion, what adjustments to make.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
.5 implement any other mutually acceptable alternative; or
.6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic, and quality needs.

§ 6.7 If the Owner chooses to proceed under Sections 6.6.4 or 6.6.6, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents before commencement of the Work shall be the limit of the Architect's responsibility under Article 6.

6.8 If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Architect, then the Architect shall bear financial responsibility to Owner for the increase in the Cost of the Work,

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except for all materials, labor, and overhead related to the betterment obtained by the Owner. By way of example, the Architect shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Architect's negligent error or omission, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Architect shall not be entitled to Architect's fee for the excess Cost of the Work. Unless Architect disputes the amounts due pursuant to the alternative dispute resolution process provided in Article 8 of this Agreement, as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

ARTICLE 7 COPYRIGHTS AND LICENSES/OWNERSHIP OF PROJECT DOCUMENTS

§ 7.1 Upon completion of the Project and payment in full for the services performed pursuant to this Agreement, the Drawings, Specifications, and Construction Documents, including those in electronic form, prepared by the Architect ("Instruments of Service") through which the Work to be executed by the Contractor or is to be performed, shall become the property of Owner. The Architect may retain one record set of the Instruments of Service or additional copies as approved by the Owner in writing for the Architect to perform its services under this Agreement. Neither the Architect nor any design consultant or professional, other consultant, or employee of the Architect shall own or claim a copyright in the Instruments of Service, and unless otherwise indicated, the Owner will own them and have all common law, statutory, and other reserved rights, in addition to the copyright, upon creation of the Instruments of Service. To this end, Architect agrees and does hereby assign, grant, transfer, and convey to Owner, its successors and assigns, Architect's entire right, title, interest and ownership in and to such Instruments of Service, including, without limitation, the right to secure copyright registration. Architect confirms that Owner shall own Architect's right, title, interest in and to, including the right to use and reproduce, to perform publicly, and to display, all such Instruments of Service, whether or not such Instruments of Service constitute a "Work Made for Hire" as defined in 17 U.S.C. § 201(b). All copies of Instruments of Service, except the Architect's record set, shall be returned or suitably accounted for to the Owner upon completion of the Work. The Instruments of Service and copies thereof furnished to the Architect are for use solely with respect to this Project unless approved in advance by the Owner. They are not to be used by the Architect on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Architect is authorized to use and reproduce applicable portions of the Instruments of Service appropriate to and for use in the execution of its services under this Agreement. All copies made under this authorization may bear the statutory copyright notice, if any, shown on the Instruments of Service and shall be returned to Owner at the completion of the Work as set forth herein. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in dereliction of the Owner's copyrights or other reserved rights. Except for its record set, upon payment in full for all services performed, Architect shall deliver all copies of the Instruments of Service to Owner upon the earlier to occur of the Owner's request, completion of the Work, or termination of this Agreement for any reason. In exchange for the rights granted herein, the Owner agrees not to sell the Instruments of Service created by the Architect or any design professional or consultant to any third party, but may provide a copy of the Instruments of Service to a subsequent purchaser or transferee in connection with the sale of or transfer of title to the building or structure to which the applicable Instruments of Service pertains. Notwithstanding the foregoing, and intellectual property owned by the Architect prior to the performance of services under this Agreement, such as standard details and specifications that are not specific to this Project or any Sub-Project, shall remain the property of the Architect.

§ 7.2 The Instruments of Service may be used as a prototype by the Owner for other facilities. The Owner may elect to use the Architect to perform the site adaptation and other professional services involved in the reuse of the Instruments of Service. If such is the case, the Architect is obligated to perform the work for additional compensation that will fairly compensate the Architect only for the additional work involved. It is reasonable to expect that the fair additional compensation may be significantly less than the fee provided for under this Agreement. If the Owner uses the Instruments of Service for any other project, except for any subsequent use other than with the review, adaptation administration and/or other involvement of the Architect in the subsequent project, the Owner shall release the Architect from any liability for any errors and omissions in connection with such subsequent use. In the event of any reuse or modification of the Architect's Instruments of Service, the names and seals of the Architect and its consultants, if any, shall first be removed from the Instruments of Service.

§ 7.3 Intentionally deleted.

§ 7.3.1 Intentionally deleted.

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§ 7.4 Intentionally deleted.

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement for any reason.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement, in accordance with the requirements of the binding dispute resolution selected in this Agreement and within the period specified by applicable law.

§ 8.1.2 By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provide herein and as specifically authorized by law.

§ 8.1.3 Other than as provided in this Agreement in no event shall the Parties be liable for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement. In any litigation arising under this Agreement, the types and amounts of damages recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271.

§ 8.1.4 In any litigation under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

§ **8.1.5** When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section.

§ 8.2.2 A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Signed, written agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 Intentionally deleted.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[X] Litigation in a court of competent jurisdiction
(Paragraphs deleted)

§ 8.3 Arbitration

§ 8.3.1 Intentionally deleted.

§ 8.3.1.1 Intentionally deleted.

§ 8.3.2 Intentionally deleted.

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§ 8.3.3 Intentionally deleted.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Intentionally deleted.

§ 8.3.4.2 Intentionally deleted.

§ 8.3.4.3 Intentionally deleted.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make timely payments of any undisputed amounts to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement if not cured by the Owner within ten (10) days following notice of any past-due payment, in accordance with Texas Government Code Chapter 2251. The Architect shall not be allowed to suspend the Architect's performance of services under this Agreement for nonpayment by Owner of disputed amounts. If the Architect fails to perform without good cause as required under this Agreement, including the failure to perform within the time and schedule required, such failure shall be considered a material breach and shall be cause for termination by Owner. For the Architect's failure to perform that does not affect the Owner's construction schedule, the Architect shall have ten (10) days from written notice of the Owner to cure any such breach before the Owner either suspends payment or terminates the Agreement.

§ 9.2 If the Owner suspends the Project for more than ninety (90) consecutive days, through no fault of the Architect, the Architect may be compensated for any undisputed amounts for services reasonably and necessarily performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for direct, actual and verifiable expenses reasonably and necessarily incurred and not able to be recovered that were caused by the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted if the Architect is unable to make up for the time and perform its services within the time period agreed upon by the Owner and Architect.

§ 9.3 If the Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven (7) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than twenty-one (21) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause. The Owner may also terminate this Agreement on seven (7) days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7

(Paragraphs deleted)

The parties hereby agree that: 1) if an order for relief is entered on behalf of the Architect, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor or relief laws; 3) if Architect makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Architect's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Architect adequate assurance of future performance in accordance with the terms and conditions of this Agreement.

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Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Architect's services in accordance with this Section.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Final Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Sections 9.7 and 11.9.

§ 9.10 This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement and any and all claims, disputes, and maters of controversy concerning this Agreement shall be governed, construed, and interpreted by the law of the State of Texas, without regard for any of its conflict of law provisions. In the event that litigation is filed, the parties agree that the exclusive and mandatory venue for any such litigation shall be in a court of competent jurisdiction located in Travis County, Texas. As a material consideration of the making of this Agreement, this Agreement and the modifications to this Agreement shall not be construed against the author of said Agreement and modifications.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract, as modified by the Owner for the Project.

§ 10.3 The person signing below on behalf of the Architect represents that he/she has the authority to execute this Agreement according to its terms. The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, heirs, administrators, executors, trustees and legal representatives to this Agreement and all of the rights, obligations, terms, provisions, and conditions herein and included in any Exhibits. The Owner and the Architect recognize that this Agreement is based upon the skill and expertise of the parties and therefore agree that the Agreement and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of execution. The Architect shall execute certificates or consents consistent with the Architect's Standard of Care pursuant to this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect, including any relationship in the nature of a third-party beneficiary.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site unless the Architect's acts or omissions, consistent with the Standard of Care as defined herein, introduced or caused or allowed to be introduced, said hazardous materials or toxic substances to the Project site. The Architect shall promptly disclose in writing to the Owner any hazardous materials specified for the Project or discovered on site, regardless of the date of discovery or the date on which the Architect learns of the hazardous nature of the materials.

§ 10.7 With prior written consent of the Owner, the Architect may include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations, but may not photograph students without prior written parental consent. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. Owner provides notice that confidential and proprietary information shall include, but shall not be limited to, all items listed in Section 10.8.

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§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar written agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: security measures; security access codes; pending real estate purchases, exchange, lease or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed confidential by law. As to Owner, the parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Chapter 552 et seq. and the Texas Open Meetings Act, Texas Government Code, Chapter 551 et. seq..

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after seven (7) days' notice to the other party, when required by law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable.

§ 10.10 No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

§ 10.11 Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in this Agreement. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.

§ 10.12 To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

§ 10.13 Contracting Information:

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Architect agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Architect and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Architect that Architect provide that information to the District.

.2 The Architect must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

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.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Architect upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Architect; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Architect agrees that the contract can be terminated if the Architect knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If Architect fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Architect in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Architect fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 10.14 NO LIENS. The parties agree that no architect, engineer, mechanic, contractor, materialman, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever, in any manner, have claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas, or upon any funds of Owner.

§ 10.15 It is understood and agreed that the relationship of Architect to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Architect the servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results the Owner desires to obtain from the Architect, and shall in no way affect the Architect's independent contractor status.

§ 10.16 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition, or agreement herein contained.

§ 10.17 Pursuant to Texas Education Code Section 44.034, Architect must give advance written notice to the Owner if the Architect or an owner or operator of the Architect has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Architect failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 10.18 CHILD SUPPORT. Intentionally deleted.

§ 10.19 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 10.19.1 Pursuant to Texas Government Code Chapter 2271, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 10.19.2 Architect verified and affirms that it is not a foreign terrorist organization as identified on the list prepared

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and maintained by the Texas Comptroller of Public Accounts. If Architect has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 10.19.3 Architect represents and warrants to the Owner that the Architect does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 10.19.4 Architect represents and warrants to the Owner that the Architect does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 10.20 CRIMINAL HISTORY RECORD CHECKS

§ 10.20.1 Architect shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Architect will cooperate with Owner to determine which Architect employees, if any, are required to submit to such background check. Before beginning any services on the Project, Owner and Architect will confer and ensure that any such required employees undergo a check, and Architect shall fully cooperate with Owner during this process. Upon request by Owner, Architect will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Architect shall assume all expenses associated with obtaining criminal history record information.

§ 10.20.2 Architect will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Architect receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Architect agrees to discontinue using that covered employee to provide services on Owner's Project. If Architect has taken precautions or imposed conditions to ensure that the employees of Architect and any of Architect's subcontractors will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.20.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Architect or any of Architect's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 10.20.4 Any subcontractor entity of the Architect shall be required by the terms of their contract with Architect to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 10.20.5 Intentionally deleted.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect for all undisputed payments. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured in accordance with Texas Government Code Section 2251.051(c) and (d). Owner shall further have the right to withhold payments as specified in Section 6.8 and 11.10.2.2 of this Agreement. Subject to the forgoing, the amount of the Architect's compensation shall be as follows:

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.1 Stipulated Sum
$90,000

.2 Percentage Basis

(Paragraph deleted)
When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project accepted by the Owner shall be payable in accordance with Section 6.1 herein.

(Paragraphs deleted)
Compensation shall be paid based on the percentage of the services actually completed by Architect. Progress payments for services in each phase for services completed shall total the percentages applicable to each phase of Architect's services in 11.5.

§ 11.2 For Additional Services approved in writing by the Owner prior to the performance of such services and subject to any other limitations set forth herein, the Owner shall compensate the Architect
(Paragraphs deleted)
on an hourly rate as set forth in Section 11.7.

§ 11.3
(Paragraphs deleted)
Intentionally deleted.

§ 11.4 Compensation for
(Paragraphs deleted)
Additional Services of the Architect's consultants, that are not part of Basic Services, will be made in accordance with Section 11.7.

§ 11.5 Payment for Basic Services shall be made in proportion to services performed so that the compensation at the completion of each phase for each Project as listed below shall equal the following percentages of the total basic compensation:

Pre-design	Zero		0	%
Schematic Design Phase	Sixteen		16	%
Design Development Phase	Twenty-Two		22	%
Construction Documents Phase	Thirty-Three		33	%
Bidding	Six		6	%
(Row deleted)				
Construction Admin	Seventeen		17	%
Closeout and Final Payment	Six		6	%
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed including items for alternate bid, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services actually performed whether or not the Construction Phase is commenced.

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§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants that are performed on an hourly basis, whether as Additional Services or as otherwise defined in a project addendum, are set forth below, or in the case of consultants, shall be set forth in a project addendum.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit B for Architect rates. Architect's consultant's rates shall be set forth in project addendums.
(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses as defined and described herein and below are in addition to compensation for Basic and Additional Services and consist of and shall mean the actual, reasonable and verifiable expenses necessarily incurred by the Architect and the Architect's consultants directly related to the Project, and for which the Architect has submitted supporting documentation as follows:

.1 Intentionally deleted;
.2 Intentionally deleted;
.3 Permitting and other fees required by authorities having jurisdiction over the Project, if authorized in advance by the Owner in writing;
.4 Printing, reproductions, plots, and standard form documents and courier expenses. The Architect shall obtain written approval of the type and quantity of the bid documents to be produced. Unauthorized printing, reproductions, plots and standard form documents shall be at no cost to the Owner;
.5 Intentionally deleted;
.6 Intentionally deleted;
.7 Intentionally deleted;
.8 Intentionally deleted
.9 Intentionally deleted;
.10 Intentionally deleted
.11 Intentionally deleted; and
.12 Other similar Project-related expenses, if approved in advance by the Owner in writing.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants. Markups on Reimbursable Expenses are not allowed.

§ 11.9
(Paragraphs deleted)
Compensation for Use of Architect's Instruments of Service. The parties agree that Architect's compensation for Basic Services includes all licensing fees for Owner's use of the Instruments of Service, including use after termination of this Agreement, to the extent allowed by this Agreement.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 Intentionally deleted.

§ 11.10.1.2 Intentionally deleted.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services completed and approved shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice.
(Paragraphs deleted)
Undisputed amounts shall be paid within the time period required under Texas Government Code Chapter 2251.021.

§ 11.10.2.2 After written notification, regarding unsatisfactory performance and ten (10) day opportunity to cure, the Owner may withhold payments to the Architect, in an amount reasonable to cover estimated legally recoverable damages, to secure performance of Architect's services and obligations under any part of this Agreement. .

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§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be provided to the Owner upon presentation of Architect's progress payment applications.

§ 11.11 Architect shall reasonably cooperate with Owner, as an Additional Service, in connection with a legal proceeding against Owner that relates to the Project to which Architect is not a party.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 INDEMNITY

Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for performance of services in accordance with the Standard of Care, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any error or omission in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF EIGHT (8) YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL ONE (1) YEAR IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH SECTION 16.008(c) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES (EXCLUDING OWNER'S CONSTRUCTION MANAGER) FROM DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEYS' FEES, INCURRED BY OWNER ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT OR INTELLECTUAL PROPERTY INFRINGEMENT, , COMMITTED BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL; provided and except, however, that this indemnification provision shall not be construed as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any persons, which may arise out of or may be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

§ 12.1.2 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 12.1, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. It is understood and agreed that Subparagraph 12.1 above is subject to, and expressly limited by, the terms and conditions of Tex. Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 12.2 RECORDS RETENTION

If the Architect has not delivered all documents and records relating to this Project to the Owner, the Architect shall keep all accounting and construction records on the Project after Final Completion of the Project for at least the number of years required by the Texas Record Retention laws, in order for the Owner to comply with its records retention requirements, per the Texas Government Code Chapter 441, Subchapter L and the Texas Library and Archives Commission's Schedule.

§ 12.3 COMPLAINTS

The Texas Board of Architectural Examiner has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupation Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, by phone at (512) 305-9000, by fax at (512) 305-8900, or on the web at http://tbae.state.tx.us.

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ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement constitutes the entire agreement and contract between the parties hereto and supersedes all prior or contemporaneous agreements, either written or oral. Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect, as amended for this Project.

.2

(Paragraphs deleted)

Exhibit A – Insurance Requirements

.3

(Paragraphs deleted)

Exhibit B – Scope of Services and Architect Hourly Rates

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**LPA, Inc.**
OWNER *(Signature)*	**ARCHITECT** *(Signature)*
Pam Sanchez, Acting Superintendent *(Printed name and title)*	Sara Flowers, Principal, License No. 20514 *(Printed name, title, and license number, if required)*
	(Signature) Jon Mills, Chief Operating Officer *(Printed name and title)*

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Additions and Deletions Report for

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This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the 19th day of February in the year 2025

...

Lake Travis ISD
3322 Ranch Rd. 620 S.
Austin, TX 78738
Telephone: 512-533-6000

...

LPA, Inc.
1811 S. Alamo Street, Suite 100
San Antonio, TX 78204
210-829-1737

...

Technology Building Addition

PAGE 2

13 SCOPE OF THE AGREEMENT INCLUDING EXHIBITS

...

§ 1.1 This Agreement is based on the ~~Initial Information set forth in this Section 1.1.~~information and assumptions set forth in this Article 1 and other documents listed in this Agreement as exhibits in Section 13.2, including any individual project addendums.

The Architect will provide comprehensive architectural and engineering services, as applicable, to include the design of the Project, creation of Construction Documents and construction contract administration for the Project in accordance with the Owner's Request for Proposals, Architect's Proposal, the Owner's Program documents, this Agreement with all exhibits, and all applicable laws.

...

LTISD 2022 Bond Program

...

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

Technology Building Addition to include: a 1,500 sf addition to the deployment room at the LTISD Distribution Building, removal of the transaction window at B11 Reception, reconfiguration of the break room area to accommodate more seating and storage and the addition of a door to the NOC and demising wall.

...

$560,000

§ 1.1.4 The Owner's anticipated ~~design and construction milestone dates:~~dates for commencement of design, construction and of Substantial Completion and Final Completion of the Work are set forth as follows:

.1 Design phase milestone dates, if any: 100% CDs to be issued 02/15/2025

.2 ~~Construction~~ Notice to Proceed/Construction commencement date: 08/15/2025

.3 Substantial Completion ~~date or dates:~~
and Final Completion dates: Substantial Completion; 05/15/2026

PAGE 3

See Project addendums

...

TBD

...

Not Applicable

...

Not applicable.

...

Robert Winovitch
Director of Facilities

...

Not applicable

...

.1 ~~Geotechnical Engineer:~~

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~~.2 Civil Engineer:~~

~~.3 Other, if any:~~
~~*(List any other consultants and contractors retained by the Owner.)*~~

Civil Engineer

PAGE 4

Federico Cavazos
LPA, Inc.
1811 S. Alamo Street, Suite 100
San Antonio, TX 78204

...

.4 Other, if any: Technology and Security. Civil is excluded.
(List any other consultants and contractors retained by the Architect.)

§ 1.1.11.2 Consultants retained under ~~Supplemental Services:~~

Additional Services:

...

See Exhibit B – LPA Scope of Services 12/20/24. However, to the extent anything within Exhibit B conflicts with other terms in this Agreement, the terms of the B101 prevail.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that ~~the Initial Information~~ such information may materially change and, in that event, the Owner and the Architect ~~shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~may adjust the schedule as mutually agreed upon by the parties, which may include any agreed upon adjustments (either upward or downward) to the Architect's services and the Architect's compensation and to be adjusted by amendment to this Agreement as approved by the Owner, including any changes required to be approved by the Owner's Board of Trustees.

§ 1.3 ~~The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.~~Intentionally deleted.

§ 1.3.1 ~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~Intentionally deleted.

...

§ 2.1 The Architect shall provide the professional services as set forth in this ~~Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.~~Agreement,

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including any exhibits, if applicable, that are necessary and reasonably inferable to complete the Project, each phase of the Project. The Architect shall allocate adequate time, personnel, and resources as necessary to perform its services. The Architect shall review the program furnished by the Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with the Owner. The Architect shall include in the Project all components of the Owner's program, as determined by the Owner, unless specific written authorization to delete a component is received from the Owner. Any civil, structural, mechanical, or electrical engineering plans and specifications or opinions of probable costs for construction must be prepared by or under the supervision of a registered professional engineer or a registered architect, whichever is applicable. The Architect shall provide to the Owner all plans, specifications, drawings and Construction Documents within the Architect's scope of services and provide such documents in electronic format. If requested by the Owner, the Architect shall assist the Owner in reviewing responses to competitive procurement documents.

§ 2.2 The Architect ~~shall perform its services consistent~~ agrees and acknowledges that the Owner is entering into this Agreement in reliance on the Architect's competence, qualifications and its professional abilities with respect to performing the Architect's services, duties and obligations under this Agreement. The Architect shall perform its services in accordance with the professional skill and care ordinarily provided by ~~architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services~~ competent architects or engineers practicing under the same or similar circumstances and professional license as set out in Texas Civil Practice and Remedies Code Section 130.0021("Standard of Care"). The Architect shall diligently perform all services under this Agreement and shall strive to further the interest of the Owner in accordance with the Owner's program and requirements and procedures. All of the Architect's services shall be performed as expeditiously as is consistent with ~~such professional skill and care and the orderly progress of the Project.~~said standards and the orderly progress of the services. The Architect's services shall be performed in accordance with the Standard of Care. The Owner shall have the right to reject any of the Architect's services because of any material errors or omissions in the plans, drawings, specifications, and other materials prepared by the Architect or its consultants. Neither acceptance nor approval of the Architect's services by the Owner shall relieve the Architect of any of its professional duties or release it from any liability, it being understood that the Owner is, at all times, relying upon the Architect for its skill and knowledge in performing the Architect's services. Promptly after the execution of this Agreement, the Architect shall prepare and submit, for the Owner's approval in writing, a detailed schedule for the performance of the Architect's services to meet the Project dates as set forth in this Agreement. The Architect's schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The time limits established by this schedule over which the Architect has control shall not be exceeded without the express written approval from the Owner. The Architect knows of no obligations, commitments, or impediments of any kind that will limit or prevent performance by the Architect of its services. The Architect hereby agrees to correct, at its own cost, any of its services and the services of its consultants that do not meet the Standard of Care set forth in this Agreement. Time is of the essence in this Agreement, subject to the Standard of Care as defined herein.

PAGE 5

§ 2.4 ~~Except with the Owner's knowledge and consent, the~~ The Architect shall not engage in any activity, or accept any employment, ~~interest~~ interest, or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this ~~Project.~~Project or otherwise be contrary to the Owner's policies and procedures or applicable law, including any conflict of interest provisions.

§ 2.5 ~~The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~Prior to performing services on the Project under this Agreement, the Architect shall procure and maintain insurance of the type and amount set forth in this Section 2.5 and in Exhibit A, attached and incorporated herein, to protect the Architect and Owner from claims arising out of the performance of the professional services under this Agreement and caused by negligent acts, errors, or omissions, of the Architect, such insurance to be in a form approved by the Owner with an effective date prior to the beginning of design by Architect. The Architect shall maintain its insurance in full force and effect during the term of this Agreement and after the completion of services under this Agreement until not less than two (2) years from the final completion of all construction of this Project, if commercially available, as to workers compensation, comprehensive general liability, and comprehensive automobile liability, and not less than eight (8) years (or ten (10) years as allowed by Texas Civil Practice and Remedies Code Section 16.008) from the final completion of all construction of this Project as to errors and omissions insurance. Notwithstanding the foregoing, nothing contained herein shall limit or reduce the number of

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years of any limitations period set forth in Chapter 16 of the Texas Civil Practices and Remedies Code or any other statute that provides a time frame for bringing a claim. If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file with the Owner a new certificate of coverage and endorsements, and if requested by the Owner, also a copy of the policy, showing that coverage has been extended. The Architect shall, if allowed by law, add the Owner as an additional insured under its policies for comprehensive general liability, comprehensive automobile liability, and umbrella liability. Insurance shall be obtained from companies authorized to do business in the State of Texas by the Texas Department of Insurance with the rating indicated in Exhibit A. Prior to the commencement of services under this Agreement, the Architect shall provide the Owner with a copy of all certificates and endorsements for the insurance required under this Agreement and if requested by the Owner, a copy of all policies.

§ 2.5.1 ~~Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.~~Intentionally deleted.

§ 2.5.2 ~~Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~Intentionally deleted.

§ 2.5.3 ~~The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~Intentionally deleted.

§ 2.5.4 ~~Workers' Compensation at statutory limits.~~Intentionally deleted.

§ 2.5.5 ~~Employers' Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.~~Intentionally deleted.

§ 2.5.6 ~~Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than ($) per claim and ($) in the aggregate.~~Intentionally deleted.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella ~~policies~~ polices 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 Architect's negligent acts or omissions.~~ insured. 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. All insurance coverage shall be issued on an Occurrence form (except Professional Liability insurance, which may be issued on a "Claims Made" form if an Occurrence form is not commercially available). Certificates must include a 60-day notice of cancellation to any of the policies or equivalents specifically naming the Owner. A waiver of subrogation clause in favor of the Owner shall be attached to the Workers Compensation, General Liability and Automobile Liability. All Engineers or other Consultants retained by the Architect shall carry and produce evidence of the same amounts of insurance coverage under the same conditions described above, and of a type acceptable to the Owner, unless different coverage is agreed to in advance by the Owner.

§ 2.5.8 The ~~Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.~~Architect's failure to comply with the insurance requirements set forth in Section 2.5 shall constitute a breach of this Agreement by the Architect and entitles the Owner to declare the Agreement void if the Architect does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner.

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§ 3.1 The Architect's Basic ~~Services~~ Services, as applicable to the individual Project, consist of those described in this Article ~~3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.~~3, other provisions of this Agreement and otherwise designated as Basic Services elsewhere in this Agreement and include, without limitation, usual and customary

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design, structural, mechanical, electrical, plumbing, lighting, architecture, interiors, and consulting services, unless otherwise revised by Section 4.1. Without limitation, Basic Services shall further include any services designated as such by Article 4.1. The Architect shall not be relieved of any obligation to perform in accordance with the Standard of Care, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

§ 3.1.1 The Architect shall ~~manage the Architect's services,~~ perform and manage the Architect's services and administer the Project in accordance with this Agreement as amended for the Project and in accordance with the AIA Document A201-2017™, General Conditions of the Contract for Construction, as amended for the Project (sometimes referred to as the "General Conditions of the Contract"), consult with the Owner and Owner's designated representative, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the ~~Owner.~~Owner through the issuance of progress reports to Owner and Contractor (where applicable, the term "Contractor" shall be inclusive of the Construction Manager), as more specifically defined hereafter. Architect agrees that the AIA Document A201-2017™, as amended for this Project, may be subject to subsequent amendments based upon negotiations between Owner, Architect and Contractor. As a condition of further service, Architect shall provide to Owner a signed statement stating Architect's agreement to adhere to any such negotiated amendments.

.1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, the Architect shall make presentations to Owner's Board of Trustees to present Schematic Design, Design Development and Construction Documents as requested by the Owner.

.2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees or designee, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board of Trustees in the further development of the design, provided that nothing herein shall relieve Architect of responsibility for providing its services in accordance with the Standard of Care.

§ 3.1.2 As part of the Architect's Basic Services, the Architect shall review the information provided by the Owner relative to the Project; shall visit and observe the site where the Project is to be located and the surroundings and adjacent areas; observe any conditions at the site affecting or that might affect the Project; evaluate the location and nature of the Work to be performed; review the geotechnical reports for the nature of the ground and subsoil, the form and nature of the site, and; familiarize itself with the local conditions under which the Project is to be constructed and the construction work is to be performed; observe the location and character of existing or adjacent work or structures; and assess the general character and accessibility of the site. Without limiting any other obligations of the Architect set forth in this Agreement, the Architect shall make recommendations to the Owner for the location of any geotechnical testing if required for the Project. The Architect shall coordinate its services with those services provided by the Owner and the Owner's ~~consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of,~~ consultants through the Owner's designated representative. The Architect reasonably may rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's ~~consultants.~~ consultants; however, the Owner does not warrant or guarantee the accuracy or completeness of such services or related information, or that any documents or information otherwise provided to the Architect accurately reflects the conditions at the site or of the Project. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, ~~omission,~~ omission or inconsistency in such services or information.

§ 3.1.3 ~~As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated~~ The Architect and the Owner agree that the initial schedule for performance of the Architect's services are as set forth in this Agreement. The schedule includes dates for the commencement of construction and the dates for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval and/or coordination of submissions by authorities having jurisdiction over the Project. ~~Once approved by the Owner,~~ Subject to any agreed upon changes to the dates established in this Agreement and except for any reasonable cause shown to have actually affected such dates, time limits established by the schedule shall ~~not, except for reasonable cause,~~ not be exceeded by the ~~Architect or Owner.~~ Architect. With the Owner's prior written approval,

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for reasonable cause, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If Contractor is a Construction Manager-at-Risk, then the Architect shall assist the Construction Manager-at-Risk in the preparation and periodic update of the Project schedule.

§ 3.1.4 ~~The~~ Matters of aesthetics are within the Owner's sole discretion. Except as provided in this Agreement or the Contract for Construction between the Owner and the Contractor, the Architect shall not be responsible for an Owner's directive or ~~substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written~~ substitution made without the Architect's approval.

§ 3.1.5 The Owner shall provide the Architect with information required by 19 Texas Administrative Code, Chapter 61, subchapter CC and Texas Health and Safety Code Section 341.065, if applicable to this Project. The Architect shall review and shall perform its services in compliance with applicable national, federal, municipal, and state of Texas laws, regulations, codes, ordinances, orders, and with those of any other body having jurisdiction in effect at the time of performance and as reasonably interpreted. The Architect shall review and be responsible for compliance with laws, codes and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations, and rules of the Owner including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, pornography, harassment, and tobacco on District property), and fraud and financial impropriety. If applicable, the Architect shall certify that it has reviewed the standards contained in 19 Texas Administrative Code, Chapter 61, subchapter CC, and has complied with the Standard of Care in executing the Construction Documents. The Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, federal regulations interpreting the Americans With Disabilities Act, Texas Government Code Chapter 469, and all requirements or standards of the Texas Department of Licensing and Regulation. The Architect shall make any and all revisions to the Drawings until the Building and/or Project receives approval through the process defined by the Elimination of Architectural Barriers program of the Texas Department of Licensing and Regulation. The Architect shall, at appropriate times, contact the governmental authorities required to coordinate and/or approve the Construction Documents and the entities providing utility services to the Project. ~~The~~ In designing the Project, the Architect shall respond to applicable design requirements imposed by ~~those authorities and entities.~~such governmental authorities and by such entities providing utility services. Design of the extension of utility services necessary for completion of the project, but not provided by entities providing utility services to the Project, shall be conducted by the Architect. The cost of construction of the lines designed by the Architect shall be considered a Cost of the Work and the Architect shall be compensated for such design work as a Cost of the Work. In the event that the utility extension work is to be issued as a separate package from the Project for bidding or construction, or is to be completed on a timeline that is different from the Project, the Architect may be entitled to additional services instead of including such work within the Cost of the Work. Requests for additional services shall be submitted in writing by the Architect and approved in writing by the Owner prior to the time such services are performed.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for ~~the~~ coordination and/or approval of governmental authorities having jurisdiction over the Project.

3.1.7 The Architect is responsible for hiring and coordinating the work of all of its consultants so that their services are appropriate for and adequately incorporated into the design of the Project. The Owner reserves the right, in its sole discretion, to reject the employment by the Architect of any consultant for the Project to which the Owner has reasonable objection. The Architect, however, shall not be required to contract with any consultant to which it has a reasonable objection. The Architect shall pay for its consultants' services out of its fees. The Owner is not responsible for any consultant fee or costs unless expressly agreed to in writing.

3.1.8 The Architect's senior principal or other representative as defined herein who is responsible for managing the Project shall not be changed without the prior written approval of the Owner. The day-to-day Project team will be led by the senior principal or other representative as identified herein unless otherwise directed by the Owner or prevented by factors beyond the control of the Architect.

3.1.9 The Architect shall not engage in any activity or course of conduct which is detrimental to the Project's best interest. The Architect shall take reasonable steps necessary to seek compliance so that the Construction Documents are adhered to by the Contractor. The Architect, however, shall not have control over or charge of and shall not be

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responsible for construction means, methods, techniques, sequences or procedures, or for job site safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner's decisions on matters relating to aesthetic effect shall be final.

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§ 3.2.1 The Architect shall review ~~the program~~ and conform to the Owner's approved Project program, preliminary design, budget and schedule of phases of work and other information furnished by the Owner, and shall review and follow all laws, codes, and regulations applicable to the Architect's ~~services.~~services, as set forth in Section 3.1.5 or elsewhere in this Agreement.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, and preliminary design, schedule, budget for the Cost of ~~the Work, Project site, the proposed procurement and delivery method,~~ the Work (limited to project elements within the Architect's scope), Project site, and the proposed procurement and delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner in writing of (1) any inconsistencies discovered in the ~~information,~~ Initial Information or other information provided to or obtained by the Architect, and (2) other information or consulting services that may be reasonably needed ~~for~~ for the Project. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule, and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easement or rights-of-way which may interfere with Owner's Project. As soon as practicable after execution of this Agreement and, if possible, before Owner's Board of Trustees designates a method of construction contract procurement, the Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner in writing of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

§ 3.2.3 The Architect shall present its written preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of ~~the Project. The Architect shall reach an~~ the Project, conforming all standards and work to be done with the Owner's budget, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach a written understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon in writing with the Owner, the Architect shall prepare and ~~present,~~ present for the Owner's ~~approval, a~~ approval a written preliminary design illustrating the scale and relationship of the Project components. Before proceeding to the Design Development Phase, the Architect shall obtain the Owner's written acceptance of the Design Documents and Owner's approval of the Architect's preliminary construction cost estimate and any recommended changes to the schedule; provided, however, this approval shall not relieve the Architect of the Architect's responsibility to perform its services in accordance with the Standard of Care.

§ 3.2.5 Based on the Owner's approval of the preliminary ~~design,~~ design and Owner's schedule and budget for the Cost of the Work, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall establish the conceptual design of the Project and illustrate the scale and relationship of the Project components. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital ~~representations. Preliminary selections of~~ modeling. The Schematic Design Documents shall show major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider ~~sustainable~~ environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing and recommending a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. ~~The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.~~

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§ 3.2.5.2 The Architect shall ~~consider~~ consider, and, if applicable, consult with the Construction Manager at Risk regarding the value of alternative materials, building systems and equipment, together with other considerations based on ~~program~~ program/preliminary design and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 ~~The Architect shall submit to the Owner an~~ When the Project requirements have been sufficiently identified, including Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities, the Architect, and if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3. To the extent the Owner has stipulated construction budget limitations for the Project, such estimated Cost of Work shall not exceed the Owner's budget limitations, unless agreed to in writing by the Owner.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the ~~Owner, and request the Owner's~~ Owner by the date set forth in the Initial Information; advise the Owner in writing, that documents are in compliance with applicable law, including 19 Texas Administrative Code Chapter 61, Subchapter CC, if applicable, and request the Owner's approval. Architect shall not proceed to the Design Development Phase without the approval of Owner's Board of Trustees or the Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility to perform its services in accordance with the Standard of Care. Architect shall bear full responsibility for any and all resulting excess costs incurred by Architect in proceeding without required approval.

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§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design ~~Documents~~ Documents, shall refine the Project design, and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work ~~prepared in accordance with Section 6.3.~~and shall conform the estimated Cost of Work to the Owner's budget. Such estimate of the Cost of the Work shall not exceed the Owner's limitations, unless agreed to in writing by the Owner.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner by the date set by the Owner, advise the Owner in writing that documents are in compliance with applicable law, including 19 Texas Administrative Code Chapter 61, Subchapter CC, if applicable, and of any and all adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

3.3.4 Before proceeding to the Construction Document Phase, the Architect shall obtain the Owner's written approval and acceptance of the Design Development Documents and updated budget for the Cost of the Work; provided, however, this approval shall not relieve the Architect of the Architect's obligations, responsibilities and/or liability to provide its services in accordance with the Standard of Care. The Architect shall bear full responsibility and all resulting excess costs incurred by the Architect in proceeding without the Owner's approval.

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§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the ~~Work,~~ Work; the Owner's educational program; and any educational specifications and requirements set forth in 19 Texas Administrative Code, Chapter 61, Subchapter CC, the Architect shall prepare Construction Documents for the Owner's approval. "Construction Documents" means all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth, in detail, the requirements of construction of the Project. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings ~~and Specifications~~ and Specifications, schedules, diagrams, and all other documents as are necessary to construct the Project, setting forth in detail the quality levels ~~and performance criteria~~ of materials and systems and other

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requirements for the construction of the Work. ~~The Owner and Architect acknowledge that, in order to perform~~ The Construction Documents shall reflect all agreements between the Owner and the Architect concerning the Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. The Construction Documents shall provide information as is reasonably necessary for the use of the Construction Documents by the Contractor and those in the building trades and construction industry to perform the Work and shall include all documents required for regulatory agency approvals. The Construction Documents shall set forth in detail the requirements for construction of the Project that comply with applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents including the current interpretation of Title IX, Texas Accessibility Standards, and regulations promulgated by the Texas Education Agency (TEA) for facility standards. The Owner and the Owner's authorized representatives shall review all Construction Documents and must provide written approval of same prior to release of the documents for competitive procurement or negotiation purposes. Approval of the Construction Documents by the Owner shall not relieve the Architect of any of its obligations, responsibilities, or liability to the Owner under this Agreement. The Owner and Architect acknowledge that in order to construct the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over ~~the Project into the Construction Documents.~~the Project, and where applicable, include information related to trench excavation safety. Outdoor lighting fixtures, if any, shall meet the statutory energy conservation and light pollution standards established by the State of Texas Health and Safety Code. All ventilation and indoor air quality systems designed by the Architect shall meet the indoor air quality voluntary guidelines established by the State of Texas Health and Safety Code.

§ 3.4.3 During the development of the Construction Documents, ~~the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place,~~ if requested by the Owner, the Architect shall assist the Owner, and, if applicable, the Owner's legal counsel, in the development of (1) bidding and procurement information which describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other ~~Conditions). The Architect shall also compile a project manual~~ Conditions) as amended for the Project. After consultation with the Owner, the Architect shall also compile the Project Manual that includes the Conditions of the Contract for Construction and ~~Specifications,~~ Specifications and may include bidding requirements and sample forms. As required by law, all bid or proposal documents and contracts shall include, if applicable, all required information related to trench excavation safety. Texas Health and Safety Code Section 756.021 *et seq*. Proposal documents shall contain the prevailing wage rates in accordance with Chapter 2258 of the Texas Government Code; the adopted prevailing wage rates for the Project are indicated in the Contract Documents. The Architect shall include in the Project specifications the requirement that payment and performance bonds are to comply with the requirements of the Texas Insurance Code Chapter 3503 and the Texas Government Code Chapter 2253; that all insurance companies or sureties are licensed to do business in the State of Texas; and, where bond amounts exceed $100,000, insurance companies or sureties hold a certificate of authority from the United States Secretary of the Treasury; or, reinsurance for liability in excess of $100,000 from a reinsurer authorized and admitted as a reinsurer in the State of Texas and that is a holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. The Owner and the Architect reserve the right to rely on the United States Secretary of the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the ~~Work prepared in accordance with Section 6.3.~~Work. To the extent the Owner has stipulated a construction budget limitation for the Project, as may be amended pursuant to Section 3.4.1, such estimated Cost of the Work shall not exceed the Owner's budget limitations, unless agreed to in writing by the Owner. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided herein, and, in doing so, shall notify Owner, in writing, of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendations but shall decide, in its discretion, what adjustments to make.

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§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval by the date established by the Owner. Architect shall not proceed to the Procurement Phase without the approval of Owner's Board of Trustees, or Board designee; provided, however, this approval shall not relieve Architect of Architect's responsibility to perform its services in accordance with the Standard of Care. Architect shall bear full responsibility for any and all resulting excess costs incurred by Architect in proceeding without required approval.

3.4.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any changes in the Work, unless those changes do not involve an adjustment in the Contract Sum or Contract time, without prior written consent of the Owner. The Architect shall be liable to Owner for any damages arising from or caused by any changes to the Work made or approved by the Architect without the Owner's prior written consent.

3.4.7 Pursuant to 19 Texas Administrative Code §61.1036, the Architect shall sign and seal the Construction Documents and shall execute the Certification of Project Compliance form developed by the Texas Education Agency.

3.4.8 Architect shall submit the Construction Documents for review and approval to the Texas Department of Licensing and Regulation any time the renovation, modification, or alteration of the Work has an estimated construction cost of $50,000 or more and shall notify Owner of same. Architect shall not allow Contractor to file an application with any local governmental entity for a building construction permit until after Architect's submission to the Texas Department of Licensing and Regulation.

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~~The~~ As applicable, the Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction ~~Documents, the Architect shall assist the Owner~~ Documents or at such time as is appropriate for the Project, the Architect shall assist the Owner, and if applicable, the Owner's legal counsel in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction. The Owner will select the method that provides the best value for the Project.

...

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents. As used herein, the terms "bid," "Bid," "Bidding," and "Bidding Documents" shall include and mean any form of competitive procurement selected by the Owner and the applicable documents related thereto under Chapter 44 of the Texas Education Code and Chapter 2269 of the Texas Government Code.

§ 3.5.2.2 The Architect shall assist the ~~Owner~~ Owner, only if applicable, in bidding the Project by:

- **.1** ~~facilitating the distribution of Bidding Documents~~ if requested by the Owner, assist in preparation of bid documents;
- **.2** procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- ~~**.2**~~ **.3** distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- **.4** organizing and conducting a pre-bid conference for prospective bidders;
- ~~**.3**~~ **.5** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; ~~and,~~
- ~~**.4**~~ **.6** organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the ~~Owner.~~Owner;
- **.7** organizing and participating in selection interviews with prospective contractors and
- **.8** if requested by Owner, participating in negotiations with prospective contractors, and subsequently preparing a summary report of negotiating results, as directed by Owner

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, ~~as an Additional Service,~~ consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders. The Architect shall review, in conjunction with the Owner, the Owner's

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representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction with Owner's overall budget for the Project.

§ 3.5.3 ~~Negotiated~~ Proposals

§ 3.5.3.1 ~~Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~The Architect shall assist the Owner in obtaining construction services and shall assist the Owner in awarding and preparing contracts for construction.

§ 3.5.3.2 ~~The~~ If requested by the Owner, the Architect shall assist the Owner in obtaining proposals ~~by:~~

~~**.1** facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;~~

~~**.2** organizing and participating in selection interviews with prospective contractors;~~

~~**.3** preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~

~~**.4** participating in negotiations with prospective contractors,~~ by participating in negotiations with prospective contractors and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, ~~as an Additional Service,~~ consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors. The Architect shall review, in conjunction with Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction within Owner's overall budget for the Project.

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§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for ~~Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~Construction, as amended for the Project and as specified in Section 3.1.1 herein. While on Owner's property and throughout Architect's services under this Agreement, the Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and prohibitions against fraud and financial impropriety.

§ 3.6.1.2 The Architect shall be a representative of the Owner and shall advise and consult with the Owner during the Construction Phase ~~Services.~~ Services, attend weekly meetings with the Contractor, and issue written project reports. The Architect shall have authority to act on behalf of the Owner only to the extent provided ~~in this Agreement.~~ in this Agreement and subject to any limitations in law applicable to public school districts. Additionally, except as expressly set forth in this Agreement or the General Conditions of the Contract, the Architect shall not have the authority to approve any changes in the Work without the written approval by the Owner and in no event shall the Architect have the authority to approve any change that would modify the Contract Time or the Contract Sum/Guaranteed Maximum Price, as applicable. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

§ 3.6.1.3 ~~Subject to Section 4.2 and except as provided in Section 3.6.6.5, the~~ The Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates ~~on the date the Architect issues the final Certificate for Payment.~~upon final completion of the Construction Phase after the Architect determines that the Contractor has completed all work required by the Contract Documents including all punch list deficiencies and completion of one-year warranty phase services.

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§ 3.6.2.1 The Architect shall visit the site at least once per week (or more often, in accordance with industry standards or Owner's reasonable request) and at other intervals appropriate to the stage of construction, ~~or as otherwise required in Section 4.2.3, to become generally familiar with~~ to (1) observe the progress and quality of the Work completed, (2) to reject any observed non-conforming Work, (3) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, ~~and to determine, in general,~~ (4) to guard the Owner against defects and deficiencies in the Work; (5) to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract ~~Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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.~~Documents and on time; and (6) to document the progress of the Work, in written and photographic form as appropriate. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Architect will attend job site meetings as requested.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with Contract Documents and shall notify Owner of all corrective actions taken or recommended. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. Performance of any additional inspection or testing, which would result in additional cost to the Owner, shall require advance notice to and written approval of the Owner. However, neither this authority of the ~~Architect~~ Architect, nor a decision made in good faith either to ~~exercise~~ exercise, or not to ~~exercise such authority~~ exercise, such authority, shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The testing or inspections required by this Section are subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 3.6.2.3 The Architect shall interpret and ~~decide~~ make recommendations to Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and ~~decisions~~ recommendations of the Architect shall be consistent with the intent ~~of,~~ of and reasonably inferable ~~from,~~ from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and ~~decisions,~~ recommendations, the Architect shall endeavor to secure faithful performance by both ~~Owner and Contractor, shall not show partiality to either,~~ the Owner and Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. ~~The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.~~

§ 3.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims.~~ The Architect shall promptly render initial written recommendations on Claims, disputes and other matters in question between the Owner and Contractor as provided in the Contract Documents.

...

§ 3.6.3.1 The Architect shall observe the progress of the Work, evaluate, review and certify the amounts due the Contractor and shall issue certificates in ~~such amounts.~~ such amounts, if such amounts are validly requested, within seven days of receipt of the Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, ~~that, to the best of the Architect's knowledge,~~

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~~information and belief,~~ that the Work has progressed to the point ~~indicated,~~ indicated and that 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 (1)~~ Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect. The term "certify" as used by the Architect shall mean to state or declare a professional opinion in accordance with the Standard of Care, of conditions known at the time such certifications are made. The Architect's certification of certain information or conditions in no way relieves the Contractor from meeting requirements imposed by contract or other means, including commonly accepted industry standards.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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,~~ Work except as otherwise required by this Agreement, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 3.6.4.1 The Architect shall prepare a listing of all required submittals for the Project and distribute to the Owner and the Contractor. The Architect shall review the Contractor's proposed submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 ~~The Architect shall review and approve, or take other appropriate action upon,~~ In accordance with the Architect-approved submittal schedule, the Architect shall 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions ~~or~~ or, unless otherwise specifically stated by the Architect, 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. The Architect shall promptly report in writing to the Contractor and the Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roofing, foundations, outward appearance, color schemes, floor plans, building materials, or equipment without the Owner's prior written consent.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, ~~materials,~~ materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review ~~and take appropriate action on~~ Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. ~~The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~ The Architect shall be entitled to rely ~~upon, and shall not be responsible for, the adequacy and accuracy~~ upon the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design ~~professionals.~~professionals, provided that the Owner does not guarantee or warrant the accuracy of same.

§ 3.6.4.4 ~~Subject to Section 4.2, the~~ The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and

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Specifications in response to the requests for ~~information.~~information at no additional charge to the Owner, and shall incorporate such changes in closeout documents furnished to the Owner at the completion of the Project.
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§ 3.6.5.1 ~~The Architect 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.~~With notice to and consent from the Owner, the Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum, or an expenditure of contingency funds or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified as Basic Services of the Architect.

...

§ 3.6.5.3 The Architect shall prepare Drawings, Specifications, and other documentation and supporting data, and provide other services in connection with Proposal Requests; Architect's Supplemental Instructions; Change Orders; Allowance Authorization Expenditures; and Construction Change Directives at no additional expense to the Owner, whether initiated by the Owner, the Contractor or the Architect.

§ 3.6.5.4 The Architect shall prepare a set of reproducible record drawings and record specifications showing significant changes made during construction based upon marked-up prints, drawings and other data furnished by the Contractor to the Architect or based on the Architect's revisions. The drawings and specification records furnished by the Architect to the Owner shall be in native drawing format and be accompanied by a printed copy of the drawings and specifications.

...

.1 conduct ~~inspections~~ site observations to determine the date or dates of Substantial Completion and the date of ~~final completion;~~Final Completion;

.2 issue Certificates of Substantial ~~Completion;~~Completion and of Final Completion, using Owner's designated forms;

.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor;~~and,~~

.4 issue a final Certificate for Payment based upon a final ~~inspection indicating that, to the best of the Architect's knowledge, information, and belief, the~~ site observation indicating that the Work complies with the requirements of the Contract ~~Documents.~~Documents; and

.5 for any Work that exceeds $50,000, Architect shall schedule and ensure completion of inspections with the Texas Department of Licensing and Regulation as required by Texas Government Code Section 469.105.

§ 3.6.6.2 The Architect's ~~inspections~~ site observations shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect's site observations shall continue until Final Completion is achieved and any warranty work is complete and accepted by the Owner.

§ 3.6.6.3 When ~~Substantial Completion has been achieved,~~ the Work is found to be substantially complete, and when the Work is finally complete, the Architect shall inform the Owner in writing about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. As a condition to the Project being considered Substantially Complete, the Architect shall obtain the certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.4.7.3 above.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2)

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affidavits, receipts, releases and waivers of claims, liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and ~~performance.~~performance, including, without limitation, to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner.

~~**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**~~

§ 3.6.6.6 After written notification, regarding unsatisfactory performance and ten (10) day opportunity to cure, the Owner may withhold payments to the Architect, in an amount reasonable to cover estimated legally recoverable damages, to secure performance of Architect's services and obligations under any part of this Agreement.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 ~~Supplemental~~ Additional Services

§ 4.1.1 ~~The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate~~ As applicable, the Architect shall furnish or provide the services below as Basic Services without additional compensation unless it is indicated below to be an Additional Service, in which case the Additional Service, if requested by the Owner and approved in writing in advance, shall be compensated to the Architect as provided in Section 11.2.~~Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.~~

~~(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)~~

~~Supplemental~~ Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	Architect – Basic Service
§ 4.1.1.2 Multiple preliminary designs	Architect – Basic Service
§ 4.1.1.3 Measured drawings	Architect – Supplemental Services
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Architect – Basic Service
§ 4.1.1.6 Building Information Model management responsibilities	Architect – Basic Service
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect – Basic Service
§ 4.1.1.8 Civil engineering	Owner
§ 4.1.1.9 Landscape design	Owner
§ 4.1.1.10 Architectural interior design	Architect – Basic Service
§ 4.1.1.11 Value analysis	Architect – Basic Service
§ 4.1.1.12 Detailed cost estimating ~~beyond that required in Section 6.3~~	Not provided
§ 4.1.1.13 On-site project representation	Not provided
§ 4.1.1.14 Conformed documents for construction	Architect – Basic Service
§ 4.1.1.15 As-designed record drawings	Architect – Basic Service
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided

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~~Supplemental~~ Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.20 Intentionally Deleted	Intentionally Deleted
~~**§ 4.1.1.20** Architect's coordination of the Owner's consultants~~	
§ 4.1.1.21 Telecommunications/data design	Architect – Basic Service
§ 4.1.1.22 Security evaluation and planning	Architect – Basic Service
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25 Fast-track design services	Not provided
§ 4.1.1.26 Alternate bid items	Architect – Additional Service
~~**§ 4.1.1.26** Multiple bid packages~~	
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.29 Warranty Phase Support Services	Not Provided
~~**§ 4.1.1.29** Other services provided by specialty Consultants~~	
§ 4.1.1.30 Land Surveying	Owner
~~**§ 4.1.1.30** Other Supplemental~~ **§ 4.1.1.31** Geotechnical Services	Owner

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§ 4.1.1.39 Traffic Design	Owner
§ 4.1.1.40 TAS Review / Inspection	Architect – Basic Service / Reimbursable

...

§ 4.1.2.1 ~~A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.~~

~~*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*~~

Intentionally deleted.

§ 4.1.2.2 ~~A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.~~Intentionally deleted.

...

§ 4.1.3 ~~If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.~~Intentionally deleted.

...

~~The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.~~Additional services beyond those described as Basic Services in this Agreement may be provided after execution of this Agreement, without invalidating the Agreement if agreed to in writing by the Owner before performance of any such services. The Owner shall have no obligation to pay for any Additional Services performed unless and until the Owner agrees to such Additional Services in writing and to the amount of increase in

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compensation for same and signed by the Owner. If the Owner deems that all or a part of such Additional Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. The Architect shall not be entitled to an upward adjustment in compensation or Reimbursable Expenses due to the fault or error of the Architect or Architect's consultants, but may be subject to a downward adjustment in compensation. .

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect may be entitled to an adjustment and shall not proceed to provide the following ~~Additional Services~~ services until the Architect receives the Owner's written ~~authorization:~~authorization. Subject to the limits and requirements set forth in this Agreement, the following would be considered Additional Services:

.1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a ~~material~~ significant change in the scope of the Project including but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery ~~method;~~method, except when such change is required due to an error or omission of the Architect or any of the Architect's consultants;

.2 Services necessitated by the ~~enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;~~Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared ~~Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;~~and approved Instruments of Service necessitated by enactment or revision of codes, laws, or regulations, or official interpretations ;

.4 ~~Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~

.5 ~~Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;~~

.6 ~~Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~ Preparation

.7 ~~Preparation~~ for, and attendance at, a ~~public presentation, meeting or hearing;~~

.8 ~~Preparation for, and attendance at, a~~ dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; and

.9 ~~Evaluation of the qualifications of entities providing bids or proposals;~~

.10 **.5** Consultation concerning replacement of Work resulting from fire or other cause during ~~construction; or,~~

.11 ~~Assistance to the Initial Decision Maker, if other than the Architect.~~construction.

§ 4.2.2 ~~To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.~~

.1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~

.2 ~~Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~

.3 ~~Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~

.4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~

.5 ~~Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.~~Intentionally deleted.

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.1 ( ) Five (5) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor Contractor;

.2 ( ) visits Five (5) Visits to the site by the Architect during construction as required by Section 3.6.2.1;

.3 ( ) inspections for any Five (5) site observations for each portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents Documents; and

.4 ( ) inspections for any Five (5) site observations for each portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.Intentionally deleted.

§ 4.2.5 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.Intentionally deleted.

...

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.consult with the Architect regarding the Owner's contemplated objectives, schedule constraints and criteria, requirements for and limitations on the Project site requirements, and will provide timely information as reasonably may be necessary for the Architect to provide Architectural services. The Architect shall be responsible for having knowledge of and adhering to any building code authority that may be applicable to the Project, including, without limitation, the requirements of the Texas Administrative Code.

...

§ 5.3 The Owner shall identify a representative authorized render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Except as otherwise delegated to administration, Owner's Board of Trustees, by majority vote at a properly called meeting, is the only representative of the Owner, a public independent school district, having the power to enter into a contract, approve changes in the Scope of the Work, approve a change resulting in an increase to the Contract Sum or Guaranteed Maximum Price of $100,000 or more, approve a change in Owner's budget, or to agree to an extension of the date of Substantial Completion or Final Completion. The Owner designates Paul Norton, Superintendent, to sign contracts and other documents and to act on the Owner's behalf with respect to the Project. The Owner designates Robert Winovitch as its representative for day-to-day responsibilities of the Owner and for decision making authority as delegated by the Board and Superintendent. The Owner shall render decisions and approve the Architect's submittals in a reasonably timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe Upon written request of the Architect, the Owner shall furnish surveys known to Owner describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.Other than the metes and bounds noted in the legal description of the site or the survey, the Architect shall not be entitled to rely on the accuracy of information furnished by the Owner. Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes, or pipelines, or the presence or absence of easements. Architect

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shall review this information and shall provide to Owner a written request for additional information needed, if any, for Architect to adequately perform services hereunder. Upon receipt of this request, the Owner will procure and provide to the Architect the information requested.

§ 5.5 The Owner ~~shall~~ may furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The parties may agree for this service to be provided by the Architect.

§ 5.6 The Owner shall provide the ~~Supplemental Services~~ services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 ~~If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.~~Intentionally deleted.
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§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract ~~Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~Documents to be furnished by the Owner. To the extent that tests, inspections, and reports are not required by law or the Contract Documents to be furnished by Owner, but are deemed necessary by the Architect or Owner, then they shall be furnished by Architect, unless Architect receives Owner's written permission to charge Owner for the services or Owner agrees to separately contract for the services.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner determines may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Architect acknowledges that it is the leader of the design team and is responsible for the design of the Project. Therefore, Owner shall be entitled to rely on the Construction Documents, services, and information furnished by the Architect. This section shall not relieve Architect of any responsibility or liability for the performance of Architect's contracted services on the Project.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall ~~promptly~~ endeavor to notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 ~~Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement.~~ The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the ~~Contract for Construction.~~Contract.

...

§ 5.15 ~~Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~Intentionally deleted.

...

§ 6.1 For purposes of this Agreement, the ~~Cost of the Work shall be~~ compensation to the Architect shall be based on the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall ~~include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by,~~ be based on the actual amounts paid for the Cost of the Work (as defined in the construction contract); and the Contractors' general conditions costs, overhead and profit (collectively "Construction Costs"), which may be a lump sum or Guaranteed Maximum Price. To

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the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include elements of the Project designed by Architect but not accepted by the Owner. The Cost of the Work does not include the compensation of the ~~Architect;~~ Architect, the costs of the land, rights-of-way, financing, ~~or~~ contingencies for changes in the ~~Work;~~ Work or other costs that are the responsibility of the ~~Owner.~~Owner, including purchase of equipment, furniture, fixtures, or pre-fabricated items, and does not include any amounts budgeted or included in allowances or contingencies unless actually paid by the Owner to the Contractor.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and ~~shall~~ may be adjusted throughout the Project as required under ~~Sections 5.2, 6.4 and 6.5.~~ this Agreement. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. ~~It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.~~If the Architect's design is determined to exceed Owner's budget, then Architect agrees to redesign the Project at Architect's expense and as part of Architect's Basic Services, to meet Owner's budget.

§ 6.3 The Architect, and the Construction Manager at Risk, if applicable, shall prepare a preliminary estimate of the Cost of the Work, which shall incorporate Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and, if applicable, the Construction Manager at Risk, shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with Owner, and, if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the ~~Project;~~ Project with the prior consent of Owner's Board of Trustees or designee; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. ~~The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.~~

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work ~~shall~~ may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential elements of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's Budget. If the Architect is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or ~~budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.~~budget. Owner shall consider Architect's recommendation, but shall decide, in its discretion, what adjustments to make.

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.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; ~~or,~~

.5 implement any other mutually acceptable ~~alternative.~~alternative; or

.6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic, and quality needs.

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§ 6.7 If the Owner chooses to proceed under ~~Section 6.6.4, the Architect~~ Sections 6.6.4 or 6.6.6, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. ~~If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.~~The Architect's modification of the Construction Documents before commencement of the Work shall be the limit of the Architect's responsibility under Article 6.

6.8 If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Architect, then the Architect shall bear financial responsibility to Owner for the increase in the Cost of the Work, except for all materials, labor, and overhead related to the betterment obtained by the Owner. By way of example, the Architect shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Architect's negligent error or omission, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Architect shall not be entitled to Architect's fee for the excess Cost of the Work. Unless Architect disputes the amounts due pursuant to the alternative dispute resolution process provided in Article 8 of this Agreement, as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

~~ARTICLE 7 COPYRIGHTS AND LICENSES~~
ARTICLE 7 COPYRIGHTS AND LICENSES/OWNERSHIP OF PROJECT DOCUMENTS

§ 7.1 ~~The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.~~Upon completion of the Project and payment in full for the services performed pursuant to this Agreement, the Drawings, Specifications, and Construction Documents, including those in electronic form, prepared by the Architect ("Instruments of Service") through which the Work to be executed by the Contractor or is to be performed, shall become the property of Owner. The Architect may retain one record set of the Instruments of Service or additional copies as approved by the Owner in writing for the Architect to perform its services under this Agreement. Neither the Architect nor any design consultant or professional, other consultant, or employee of the Architect shall own or claim a copyright in the Instruments of Service, and unless otherwise indicated, the Owner will own them and have all common law, statutory, and other reserved rights, in addition to the copyright, upon creation of the Instruments of Service. To this end, Architect agrees and does hereby assign, grant, transfer, and convey to Owner, its successors and assigns, Architect's entire right, title, interest and ownership in and to such Instruments of Service, including, without limitation, the right to secure copyright registration. Architect confirms that Owner shall own Architect's right, title, interest in and to, including the right to use and reproduce, to perform publicly, and to display, all such Instruments of Service, whether or not such Instruments of Service constitute a "Work Made for Hire" as defined in 17 U.S.C. § 201(b). All copies of Instruments of Service, except the Architect's record set, shall be returned or suitably accounted for to the Owner upon completion of the Work. The Instruments of Service and copies thereof furnished to the Architect are for use solely with respect to this Project unless approved in advance by the Owner. They are not to be used by the Architect on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Architect is authorized to use and reproduce applicable portions of the Instruments of Service appropriate to and for use in the execution of its services under this Agreement. All copies made under this authorization may bear the statutory copyright notice, if any, shown on the Instruments of Service and shall be returned to Owner at the completion of the Work as set forth herein. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in dereliction of the Owner's copyrights or other reserved rights. Except for its record set, upon payment in full for all services performed, Architect shall deliver all copies of the Instruments of Service to Owner upon the earlier to occur of the Owner's request, completion of the Work, or termination of this Agreement for any reason. In exchange for the rights granted herein, the Owner agrees not to sell the Instruments of Service created by the Architect or any design professional or consultant to any third party, but may provide a copy of the Instruments of Service to a subsequent purchaser or transferee in connection with the sale of or transfer of title to the building or structure to which the applicable Instruments of Service pertains. Notwithstanding the foregoing, and intellectual property owned by the Architect prior to the performance of services under this Agreement, such as

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standard details and specifications that are not specific to this Project or any Sub-Project, shall remain the property of the Architect.

§ 7.2 The ~~Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~Instruments of Service may be used as a prototype by the Owner for other facilities. The Owner may elect to use the Architect to perform the site adaptation and other professional services involved in the reuse of the Instruments of Service. If such is the case, the Architect is obligated to perform the work for additional compensation that will fairly compensate the Architect only for the additional work involved. It is reasonable to expect that the fair additional compensation may be significantly less than the fee provided for under this Agreement. If the Owner uses the Instruments of Service for any other project, except for any subsequent use other than with the review, adaptation administration and/or other involvement of the Architect in the subsequent project, the Owner shall release the Architect from any liability for any errors and omissions in connection with such subsequent use. In the event of any reuse or modification of the Architect's Instruments of Service, the names and seals of the Architect and its consultants, if any, shall first be removed from the Instruments of Service.

§ 7.3 ~~The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~Intentionally deleted.

§ 7.3.1 ~~In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~Intentionally deleted.

§ 7.4 ~~Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~Intentionally deleted.

§ 7.5 ~~Except as otherwise stated in Section 7.3, the~~ The provisions of this Article 7 shall survive the termination of this ~~Agreement.~~Agreement for any reason.

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§ 8.1.1 The Owner and Architect shall commence all claims and causes of ~~action against the other and~~ action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement, ~~whether in contract, tort, or otherwise,~~ in accordance with the requirements of the binding dispute resolution ~~method~~ selected in this Agreement and within the period specified by applicable ~~law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~law.

§ 8.1.2 ~~To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights~~

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as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provide herein and as specifically authorized by law.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.Other than as provided in this Agreement in no event shall the Parties be liable for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement. In any litigation arising under this Agreement, the types and amounts of damages recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271.

§ 8.1.4 In any litigation under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

§ **8.1.5** When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

...

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.resolution, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Signed, written agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

...

[ ] Arbitration pursuant to Section 8.3 of this Agreement

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

[ ] Other: *(Specify)*

~~If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.~~

...

§ 8.3.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~Intentionally deleted.

§ 8.3.1.1 ~~A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~Intentionally deleted.

§ 8.3.2 ~~The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~Intentionally deleted.

§ 8.3.3 ~~The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~Intentionally deleted.

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§ 8.3.4.1 ~~Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~Intentionally deleted.

§ 8.3.4.2 ~~Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~Intentionally deleted.

§ 8.3.4.3 ~~The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~Intentionally deleted.

...

§ 9.1 If the Owner fails to make timely payments of any undisputed amounts to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this ~~Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.~~Agreement if not cured

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by the Owner within ten (10) days following notice of any past-due payment, in accordance with Texas Government Code Chapter 2251. The Architect shall not be allowed to suspend the Architect's performance of services under this Agreement for nonpayment by Owner of disputed amounts. If the Architect fails to perform without good cause as required under this Agreement, including the failure to perform within the time and schedule required, such failure shall be considered a material breach and shall be cause for termination by Owner. For the Architect's failure to perform that does not affect the Owner's construction schedule, the Architect shall have ten (10) days from written notice of the Owner to cure any such breach before the Owner either suspends payment or terminates the Agreement.

§ 9.2 If the Owner suspends the ~~Project, the Architect shall be compensated for services~~ Project for more than ninety (90) consecutive days, through no fault of the Architect, the Architect may be compensated for any undisputed amounts for services reasonably and necessarily performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for ~~expenses incurred in~~ direct, actual and verifiable expenses reasonably and necessarily incurred and not able to be recovered that were caused by the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably ~~adjusted.~~adjusted if the Architect is unable to make up for the time and perform its services within the time period agreed upon by the Owner and Architect.

§ 9.3 If the Owner suspends the Project for more than ~~90 cumulative~~ ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven (7) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than ~~seven~~ twenty-one (21) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause. The Owner may also terminate this Agreement on seven (7) days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, ~~Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.~~together with Reimbursable Expenses then due.

§ 9.7 ~~In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:~~
~~*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*~~

~~.1 Termination Fee:~~

~~.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

The parties hereby agree that: 1) if an order for relief is entered on behalf of the Architect, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor or relief laws; 3) if Architect makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Architect's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Architect adequate assurance of future performance in accordance with the terms and conditions of this Agreement. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Architect's services in accordance with this Section.

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§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of ~~Substantial~~ Final Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and ~~Section 9.7.~~Sections 9.7 and 11.9.

§ 9.10 This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.

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§ 10.1 This Agreement ~~shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~and any and all claims, disputes, and maters of controversy concerning this Agreement shall be governed, construed, and interpreted by the law of the State of Texas, without regard for any of its conflict of law provisions. In the event that litigation is filed, the parties agree that the exclusive and mandatory venue for any such litigation shall be in a court of competent jurisdiction located in Travis County, Texas. As a material consideration of the making of this Agreement, this Agreement and the modifications to this Agreement shall not be construed against the author of said Agreement and modifications.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the ~~Contract for Construction.~~Contract, as modified by the Owner for the Project.

§ 10.3 The person signing below on behalf of the Architect represents that he/she has the authority to execute this Agreement according to its terms. The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, ~~and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.~~heirs, administrators, executors, trustees and legal representatives to this Agreement and all of the rights, obligations, terms, provisions, and conditions herein and included in any Exhibits. The Owner and the Architect recognize that this Agreement is based upon the skill and expertise of the parties and therefore agree that the Agreement and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the ~~proposed~~ language of such certificates shall be submitted to the Architect for review at least ~~14~~ fourteen (14) days prior to the requested dates of ~~execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of~~ execution. The Architect shall execute certificates or consents consistent with the Architect's Standard of Care pursuant to this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or ~~Architect.~~Architect, including any relationship in the nature of a third-party beneficiary.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site unless the Architect's acts or omissions, consistent with the Standard of Care as defined herein, introduced or caused or allowed to be introduced, said hazardous materials or toxic substances to the Project site. The Architect shall promptly disclose in writing to the Owner any hazardous materials specified for the Project or discovered on site, regardless of the date of discovery or the date on which the Architect learns of the hazardous nature of the materials.

§ 10.7 ~~The Architect shall have the right to~~ With prior written consent of the Owner, the Architect may include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such

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~~representations.~~ representations, but may not photograph students without prior written parental consent. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. ~~The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.~~Owner provides notice that confidential and proprietary information shall include, but shall not be limited to, all items listed in Section 10.8.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except ~~as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.~~to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar written agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: security measures; security access codes; pending real estate purchases, exchange, lease or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed confidential by law. As to Owner, the parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Chapter 552 et seq. and the Texas Open Meetings Act, Texas Government Code, Chapter 551 et. seq..

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after ~~7~~ seven (7) days' notice to the other party, when required by law, ~~arbitrator's order,~~ or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 ~~The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.~~In the event that any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable.

§ 10.10 No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

§ 10.11 Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in this Agreement. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.

§ 10.12 To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

§ 10.13 Contracting Information:

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.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Architect agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Architect and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Architect that Architect provide that information to the District.

.2 The Architect must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Architect upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Architect; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Architect agrees that the contract can be terminated if the Architect knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If Architect fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Architect in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Architect fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 10.14 NO LIENS. The parties agree that no architect, engineer, mechanic, contractor, materialman, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever, in any manner, have claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas, or upon any funds of Owner.

§ 10.15 It is understood and agreed that the relationship of Architect to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Architect the servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results the Owner desires to obtain from the Architect, and shall in no way affect the Architect's independent contractor status.

§ 10.16 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition, or agreement herein contained.

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§ 10.17 Pursuant to Texas Education Code Section 44.034, Architect must give advance written notice to the Owner if the Architect or an owner or operator of the Architect has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Architect failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 10.18 CHILD SUPPORT. Intentionally deleted.

§ 10.19 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 10.19.1 Pursuant to Texas Government Code Chapter 2271, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 10.19.2 Architect verified and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 10.19.3 Architect represents and warrants to the Owner that the Architect does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 10.19.4 Architect represents and warrants to the Owner that the Architect does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 10.20 CRIMINAL HISTORY RECORD CHECKS

§ 10.20.1 Architect shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Architect will cooperate with Owner to determine which Architect employees, if any, are required to submit to such background check. Before beginning any services on the Project, Owner and Architect will confer and ensure that any such required employees undergo a check, and Architect shall fully cooperate with Owner during this process. Upon request by Owner, Architect will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Architect shall assume all expenses associated with obtaining criminal history record information.

§ 10.20.2 Architect will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Architect receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Architect agrees to discontinue using that covered employee to provide services on Owner's Project. If Architect has taken precautions or imposed conditions to ensure that the employees of Architect and any of Architect's subcontractors will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.20.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Architect or any of Architect's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 10.20.4 Any subcontractor entity of the Architect shall be required by the terms of their contract with Architect to comply with the same terms set forth above regarding such subcontracting entity's employees.

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§ 10.20.5 Intentionally deleted.
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§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect for all undisputed payments. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured in accordance with Texas Government Code Section 2251.051(c) and (d). Owner shall further have the right to withhold payments as specified in Section 6.8 and 11.10.2.2 of this Agreement. Subject to the forgoing, the amount of the Architect's compensation shall be as follows:
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~~*(Insert amount)*~~
$90,000

...

~~*(Insert percentage value)*~~

~~( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project accepted by the Owner shall be payable in accordance with Section 6.1 herein.

~~**.3** Other~~
~~*(Describe the method of compensation)*~~

Compensation shall be paid based on the percentage of the services actually completed by Architect. Progress payments for services in each phase for services completed shall total the percentages applicable to each phase of Architect's services in 11.5.

§ 11.2 For ~~the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3,~~ Additional Services approved in writing by the Owner prior to the performance of such services and subject to any other limitations set forth herein, the Owner shall compensate the Architect ~~as follows:~~
~~*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*~~

on an hourly rate as set forth in Section 11.7.

§ 11.3 ~~For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:~~
~~*(Insert amount of, or basis for, compensation.)*~~

Intentionally deleted.

§ 11.4 Compensation for ~~Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (%), or as follows:~~
~~*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*~~

Additional Services of the Architect's consultants, that are not part of Basic Services, will be made in accordance with Section 11.7.

§ 11.5 ~~When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:~~Payment for Basic Services shall be made in proportion to

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services performed so that the compensation at the completion of each phase for each Project as listed below shall equal the following percentages of the total basic compensation:

Pre-design	Zero		0	%
Schematic Design Phase	Sixteen	~~percent (~~	16	~~%)~~%
Design Development Phase	Twenty-Two	~~percent (~~	22	~~%)~~%
Construction Documents Phase	Thirty-Three	~~percent (~~	33	~~%)~~%
Bidding	Six		6	%
~~Procurement Phase~~		~~percent (~~		~~%)~~
Construction ~~Phase~~Admin	Seventeen	~~percent (~~	17	~~%)~~%
Closeout and Final Payment	Six		6	%

...

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. ~~Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.~~

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not ~~constructed,~~ constructed including items for alternate bid, compensation for those portions of the Project shall be payable to the extent services are performed on those ~~portions.~~ portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services actually performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants ~~are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.~~that are performed on an hourly basis, whether as Additional Services or as otherwise defined in a project addendum, are set forth below, or in the case of consultants, shall be set forth in a project addendum.
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See Exhibit B for Architect rates. Architect's consultant's rates shall be set forth in project addendums.

~~Employee or Category~~	~~Rate ($0.00)~~

...

§ 11.8.1 Reimbursable Expenses as defined and described herein and below are in addition to compensation for ~~Basic, Supplemental, and Additional Services and include expenses~~ Basic and Additional Services and consist of and shall mean the actual, reasonable and verifiable expenses necessarily incurred by the Architect and the Architect's consultants directly related to the Project, and for which the Architect has submitted supporting documentation as follows:

.1 ~~Transportation and authorized out-of-town travel and subsistence;~~Intentionally deleted;

.2 ~~Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~Intentionally deleted;

.3 Permitting and other fees required by authorities having jurisdiction over ~~the Project;~~the Project, if authorized in advance by the Owner in writing;

.4 Printing, reproductions, plots, ~~and standard form documents;~~and standard form documents and courier expenses. The Architect shall obtain written approval of the type and quantity of the bid documents to be produced. Unauthorized printing, reproductions, plots and standard form documents shall be at no cost to the Owner;

.5 ~~Postage, handling, and delivery;~~Intentionally deleted;

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.6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~Intentionally deleted;

.7 ~~Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~Intentionally deleted;

.8 ~~If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~Intentionally deleted

.9 ~~All taxes levied on professional services and on reimbursable expenses;~~Intentionally deleted;

.10 ~~Site office expenses;~~Intentionally deleted

.11 ~~Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,~~Intentionally deleted; and

.12 Other similar Project-related ~~expenditures.~~expenses, if approved in advance by the Owner in writing.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's ~~consultants plus [ ] percent ([ ] %) of the expenses incurred.~~consultants. Markups on Reimbursable Expenses are not allowed.

§ 11.9 ~~Architect's Insurance.~~ ~~If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:~~
~~*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*~~

Compensation for Use of Architect's Instruments of Service. The parties agree that Architect's compensation for Basic Services includes all licensing fees for Owner's use of the Instruments of Service, including use after termination of this Agreement, to the extent allowed by this Agreement.

...

§ 11.10.1.1 ~~An initial payment of [ ] ($ [ ]) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~Intentionally deleted.

§ 11.10.1.2 ~~If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ($ [ ]) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~Intentionally deleted.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services completed and approved shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. ~~Amounts unpaid [ ] ([ ]) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~[ ] %~~ Undisputed amounts shall be paid within the time period required under Texas Government Code Chapter 2251.021.

§ 11.10.2.2 ~~The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~After written notification, regarding unsatisfactory performance and ten (10) day opportunity to cure, the Owner may withhold payments to the Architect, in an amount reasonable to cover estimated legally recoverable damages, to secure performance of Architect's services and obligations under any part of this Agreement. .

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§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to ~~Supplemental and~~ Additional Services, and services performed on the basis of hourly rates shall be ~~available to the Owner at mutually convenient times.~~provided to the Owner upon presentation of Architect's progress payment applications.

§ 11.11 Architect shall reasonably cooperate with Owner, as an Additional Service, in connection with a legal proceeding against Owner that relates to the Project to which Architect is not a party.

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§ 12.1 INDEMNITY

Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for performance of services in accordance with the Standard of Care, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any error or omission in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF EIGHT (8) YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL ONE (1) YEAR IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH SECTION 16.008(c) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES (EXCLUDING OWNER'S CONSTRUCTION MANAGER) FROM DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEYS' FEES, INCURRED BY OWNER ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT OR INTELLECTUAL PROPERTY INFRINGEMENT, , COMMITTED BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL; provided and except, however, that this indemnification provision shall not be construed as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any persons, which may arise out of or may be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

§ 12.1.2 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 12.1, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. It is understood and agreed that Subparagraph 12.1 above is subject to, and expressly limited by, the terms and conditions of Tex. Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 12.2 RECORDS RETENTION

If the Architect has not delivered all documents and records relating to this Project to the Owner, the Architect shall keep all accounting and construction records on the Project after Final Completion of the Project for at least the number of years required by the Texas Record Retention laws, in order for the Owner to comply with its records retention requirements, per the Texas Government Code Chapter 441, Subchapter L and the Texas Library and Archives Commission's Schedule.

§ 12.3 COMPLAINTS

The Texas Board of Architectural Examiner has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupation Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, by phone at (512) 305-9000, by fax at (512) 305-8900, or on the web at http://tbae.state.tx.us.

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§ 13.1 This Agreement ~~represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral.~~ constitutes the entire agreement and contract between the parties hereto and supersedes all prior or contemporaneous agreements, either written or oral.

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Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing. This Agreement may be amended only by written instrument signed by both ~~the~~ Owner and Architect.

...

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and ~~Architect~~Architect, as amended for this Project.

.2 ~~Building Information Modeling Exhibit, if completed:~~

Exhibit A – Insurance Requirements

.3 ~~Exhibits:~~

~~*(Check the appropriate box for any exhibits incorporated into this Agreement.)*~~

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

_____

~~[ ] Other Exhibits incorporated into this Agreement:~~
~~*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*~~

_____

~~**.4** Other documents:~~

~~*(List other documents, if any, forming part of the Agreement.)*~~Exhibit B – Scope of Services and Architect Hourly Rates

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **LPA, Inc.**

...

Pam Sanchez, Acting Superintendent

Sara Flowers, Principal, License No. 20514

...

(Signature)

Jon Mills, Chief Operating Officer

(Printed name and title)

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:44:31 ET on 02/14/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/14/2025

(Dated)

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EXHIBIT A

This Exhibit A is attached to and a part of the agreement between the Owner and Architect AIA B101-2017, as amended, ("Agreement") for the Project (as defined in this exhibit and the Agreement) between Lake Travis Independent School District ("Owner" or "District") and LPA, Inc. ("Architect") for the Owner's Project: Technology Building Addition, more particularly described in the Agreement ("Project"). The Architect will furnish insurance that meets the requirements set forth below:

1. **Insurance**.

1.1. Architect shall maintain, for the full term of the Agreement:

1.1.1. Comprehensive or commercial general liability insurance, with limits not less than $1,000,000 per each occurrence, combined single limit, and $2,000,000 general aggregate limit, for bodily injury and property damage, including coverage for contractual liability. Such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

1.1.1.1. damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Architect's employers, or

1.1.1.2. damages arising from personal or advertising injury applicable to the Architect's obligations under the Agreement, including liability assumed by and the indemnity and defense obligations of the Architect (see Certificate of Insurance attached).

1.1.2. Comprehensive or business automobile liability insurance, with limits not less than $1,000,000 combined single limit, for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles (see Certificate of Insurance attached).

1.1.3. Workers' Compensation, including employers' liability insurance, with limits not less than $1,000,000 each accident, occurrence or disease. Architect shall require Architect's consultants, if any, to provide Workers' compensation insurance for all consultants' employees engaged in work under the subcontract. Architect shall comply with all applicable requirements of Texas Labor Code Title 5 (see Certificate of Insurance attached).

1.1.4. Professional Liability, with limits not less than $2,000,000 each claim and $ 2,000,000 in the aggregate (see Certificate of Insurance attached).

1.2. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom

claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

1.3. Insurance companies shall be legally licensed and admitted through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to the District.

1.4. Before commencement of the work under this Agreement, certificates of insurance and copies of endorsements shall be furnished to the Owner, with complete copies of policies to be furnished to Owner promptly upon request.

1.5. All original and copies of certificates of insurance, endorsements, and policies shall (a) state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices; (b) except Worker's compensation and professional liability insurance, add Owner, Owner's members, directors, officers, trustees and employees of any of them as named additional insureds on all policies; (c) include a waiver of subrogation in favor of the Owner; (d) include the assigned Project and purchase order number, if applicable; and (e) include the following clause: "This policy shall not be non-renewed, or canceled, until notice has been mailed to the District. Date of cancellation may not be less than thirty (30) days after the date of mailing notice." Architect shall provide thirty (30) days advanced notice of any reduction in coverage limits or amount of insurance.

1.6. Should any of the required insurance, except for professional liability be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such annual general aggregate limit shall apply separately to the Project (with the insurer's endorsement provided to the Owner) or shall be two times the occurrence limits stipulated.

1.7. If Architect fails to maintain any required insurance, the Owner, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and to deduct the amount of the premium for such insurance from any sums due the Architect.

2. All capitalized terms used in this Insurance exhibit that are not otherwise defined herein shall have the same meaning as such terms in the Agreement.

AGENDA ITEM ACTION SHEET

AGENDA ITEM
Construction Agreements between Lake Travis ISD and American Constructors for High School No. 2 Project

RECOMMENDED ACTION
Approve the construction agreements between Lake Travis ISD and American Constructors for the High School No. 2 project and authorize the Acting Superintendent or designee to execute the agreements.

RATIONALE
In January 2024, the Board approved American Constructors as General Contractor for the construction of the new High School No. 2. The administration is seeking approval to execute the agreements with American Constructors.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
American Constructors CMR 23-01 A133-2019
American Constructors CMR 23-01 A201-2017

MEETING DATE
February 19, 2025

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 day of in the year 2025
(In words, indicate day, month, and year.)

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

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

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

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026

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

CMR 23-01 New High School No. 2
Reimers Peacock Road

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

VLK Architects, Inc
2700 Vía Fortuna #230
Austin, Texas 78746
Telephone: (512) 807-3145

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 B PREVAILING WAGE RATES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Request for Proposal Bid #24-002; see also Exhibit A, GMP Amendment

§ 1.1.2 The Project's physical characteristics:
(Paragraph deleted)
New High School with comprehensive education and athletic facilities.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

TBD

§ 1.1.4 The Owner's anticipated design and construction milestone dates:
(Paragraphs deleted)
N/A

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

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

(Paragraph deleted)
§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Request for Proposal Bid #24-002; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

§ 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.)

Architect

§ 1.1.10 The Owner will retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:
.2 Civil Survey
.3 HVAC Testing & Balancing
.4 HVAC Commissioning
.5 Construction Materials Testing
.6 Special Inspections
.7 Environmental/Hazardous Materials
.8 Traffic Impact Analysis / Management Plan

The Architect shall retain the following consultants:

.1 Structural Engineering
Dunaway & Associates

.2 MEP
MEP Engineering

.3 Building Envelope – Roofing Design

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Armko

.4 Food Service Design
Counihan & Associates

.5 Landscape / Irrigation Design
Bluefish Collaborative

.6 Civil Engineering
Malone Wheeler

.7 Technology / Security Design
AI Vickers Technology Consultant

.8 Sound Reinforcement
BAI

.9 Furniture Selection and Procurement Assistance

.10 Acoustical / Theatrical

.11 TAS Review
Able2Access

.12 DAS Systems
True North Consulting

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

Tom Oehler, AIA
2700 Via Fortuna, No. 230
Austin, Texas 78746
512-807-7127
512-689-7914

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

Joe Charlton
American Constructors
11900 West Parmer Lane, Suite 200
Cedar Park, TX 78613
jcharlton@americanconstructors.com

§ 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.)

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

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

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

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See Request for Proposal Bid #24-002; see also Exhibit A, GMP Amendment

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: LTISD Superintendent.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and

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materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

(Paragraphs deleted)

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 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, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

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§ 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, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.4 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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 suggest 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 inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget provided the budget is determined to be reasonable.

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§ 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 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval, which may consist of a verification that all specified requirements will be met.

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

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

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: 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 other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;
.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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

§ 3.1.11.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, 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 this Agreement.

§ 3.1.11.9 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, according to Section 7.8.2.

§ 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 on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall 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. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work

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with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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. Why delete this statement?

§ 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 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; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than ninety (90) days after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

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§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. 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. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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

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

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

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase, as provided in Section 8.1.2 of A201-2017.
(Paragraphs deleted)
§ 3.3.1.2 Intentionally deleted.

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

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

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

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

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

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

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

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

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

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, 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, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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

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

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

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

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

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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.

(Paragraph deleted)

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines identified prior to the start of work or shown on the construction documents during the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

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

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

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

§ 4.2 Owner's Designated Representative

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
LTISD Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

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

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and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

§ 4.3 Architect

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

§ 4.4 Inspection and Testing

Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

(Paragraph deleted)

Lump sum of $125,000

§ 5.1.2

(Paragraphs deleted)

Intentionally deleted.

(Table deleted)

§ 5.1.2.1 Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 12 months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

(Paragraphs deleted)

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable

(Paragraphs deleted)

within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. upon presentation of the Construction Manager's invoice.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 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.)

2.10 % of the Cost of Work

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

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

Only by agreement of Owner's Board of Trustees.

§ 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 A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

(Paragraphs deleted)

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 90 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

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.4 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

(Paragraph deleted)

§ 6.1.6 Other:

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

N/A

(Paragraph deleted)

§ 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(s), subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to adjustment as

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provided in the Contraction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

(Paragraph deleted)

§ 6.3 Changes in the Work

(Paragraphs deleted)

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

(Paragraph deleted)

§ 6.3.1.1 Intentionally deleted.

(Paragraph deleted)

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

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior 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 the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. 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 written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 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.

(Paragraph deleted)

§ 7.2 Labor Costs

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§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

(Paragraphs deleted)
§ 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 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 attributable to and required for the Work and only as approved by Owner.

§ 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 for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

§ 7.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

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

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

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs of transportation, 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 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 approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 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

(Paragraphs deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

§ 7.6.5.1 Intentionally deleted.

(Paragraphs 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 Costs of document reproductions and delivery charges

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, that are directly attributable to and required for the Work and are approved by the Owner.

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

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§ 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 specific 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Intentionally deleted;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for services incurred during the Preconstruction Phase;
- **.10** Delay damages or claims; and
- **.11** Construction Manager's Fee in Section 6.1.2

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

(Paragraph deleted)

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 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.

(Paragraphs deleted)

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

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

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

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

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

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

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

> "By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or

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proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

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

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

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten years after the date of Final Completion, 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, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the

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Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include unconditional prior month lien releases from each subcontractor and supplier demonstrating proof of payment by the Construction Manager. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

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

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

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) classification on the schedule of values.

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

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

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

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a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation;

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

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

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

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

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

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

§ 11.1.8 Retainage

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§ 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. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

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

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

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

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

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

§ 11.2 Final Payment

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

.1 the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

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.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

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

(Paragraphs deleted)

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

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

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

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

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

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

.3 Add the Construction Manager's Fee.

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

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

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

.7 Subtract all previous payments made by the Owner.

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

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

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

§ 11.3 Interest

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

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

§ 12.1.2 Intentionally deleted.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Intentionally deleted.

[**X**] Litigation in a court of competent jurisdiction

(Paragraphs deleted)

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 with proper venue being the county where the Project site is located.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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§ 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 less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in 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 less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 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 Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

(Paragraphs deleted)

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause

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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;

.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

N/A

§ 13.3 Suspension

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

§ 14.2 Successors and Assigns

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

§ 14.2.2 Intentionally deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1 The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work,

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the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

(Paragraphs deleted)
§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

(Paragraph deleted)
§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

(Paragraph deleted)
§ 14.3.2.5.1.4 Services include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

(Paragraph deleted)

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§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

(Paragraph deleted)
§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

(Paragraph deleted)
§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

(Paragraphs deleted)
§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

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

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

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.6 Notify the Owner in writing by certified mail or persona 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 items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that 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.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Intentionally Deleted.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

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§ 14.4 Intentionally deleted.

(Paragraphs deleted)
(Table deleted)

§ 14.5 Other provisions:

§ 14.5.1 Criminal History Checks

Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 14.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

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

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

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not

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ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

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

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

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

§ 14.5.16 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all

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construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

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

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or

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intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended

.2 Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended

.5

(Paragraphs deleted)

Exhibit B – Prevailing Wage Rate

(Paragraphs deleted)

(Paragraph deleted)

(Table deleted)

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**AMERICAN CONSTRUCTORS**
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
	Joe Charlton, COO
(Printed name and title)	*(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A133® – 2019

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PAGE 1

AGREEMENT made as of the day of in the year 2025

...

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026

...

CMR 23-01 New High School No. 2
Reimers Peacock Road

...

VLK Architects, Inc
2700 Vía Fortuna #230
Austin, Texas 78746
Telephone: (512) 807-3145

PAGE 2

EXHIBIT B ~~INSURANCE AND BONDS~~**PREVAILING WAGE RATES**

...

See Request for Proposal Bid #24-002; see also Exhibit A, GMP Amendment

...

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

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New High School with comprehensive education and athletic facilities.

...

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

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

~~**.1** Design phase milestone dates, if any:~~

~~**.2** Construction commencement date:~~

~~**.3** Substantial Completion date or dates:~~

~~**.4** Other milestone dates:~~

N/A
PAGE 3

N/A

...

N/A

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

...

See Request for Proposal Bid #24-002; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following ~~representative~~ representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

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...

Architect

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

...

.2 Civil Survey
.3 HVAC Testing & Balancing
.4 HVAC Commissioning
.5 Construction Materials Testing
.6 Special Inspections
.7 Environmental/Hazardous Materials
.8 Traffic Impact Analysis / Management Plan

The Architect shall retain the following consultants:

.1 Structural Engineering
Dunaway & Associates

.2 ~~Civil Engineer:~~MEP
MEP Engineering

.3 Building Envelope – Roofing Design
Armko

.4 Food Service Design
Counihan & Associates

.5 Landscape / Irrigation Design
Bluefish Collaborative

.6 Civil Engineering
Malone Wheeler

.7 Technology / Security Design
AI Vickers Technology Consultant

.8 Sound Reinforcement
BAI

.9 Furniture Selection and Procurement Assistance

.10 Acoustical / Theatrical

.11 TAS Review
~~**.3** Other, if any:~~Able2Access

~~(List any other consultants retained by the Owner, such as a Project or Program Manager.)~~

.12 DAS Systems
True North Consulting

PAGE 4

Tom Oehler, AIA
2700 Via Fortuna, No. 230
Austin, Texas 78746

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512-807-7127
512-689-7914

...

Joe Charlton
American Constructors
11900 West Parmer Lane, Suite 200
Cedar Park, TX 78613

...

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.
PAGE 5

See Request for Proposal Bid #24-002; see also Exhibit A, GMP Amendment

...

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price ~~Amendment~~ Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: LTISD Superintendent.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

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...

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~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.
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§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, ~~shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.~~ as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall 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. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.~~

~~**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**~~
~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of

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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 recommendations and advice of the Construction Manager concerning design alternative and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity ~~discovered by~~ discovered by, that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

§ 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;~~ construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written~~ building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, ~~reliance, and exchange of digital data, including building information models for the Project.~~and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

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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~~ Architect 's services, other Owner consultants' services, and the ~~Owner's~~ 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

...

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§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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~~ suggest 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 inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective ~~action.~~action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget provided the budget is determined to be reasonable.

§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service,~~ 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.

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§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and ~~approval.~~approval, which may consist of a verification that all specified requirements will be met.

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

...

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: 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 other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work

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shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

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

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

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

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

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

§ 3.1.11.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, 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 this Agreement.

§ 3.1.11.9 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, according to Section 7.8.2.

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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.~~Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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.~~Why delete this statement?

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~~.2~~ A ~~.2~~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; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

~~.3~~ A ~~.3~~A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~

.5 ~~A date by which the Owner must accept the Guaranteed Maximum Price.~~The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than ninety (90) days after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 ~~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.~~ The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a

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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. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~any taxes from which Owner is exempt.

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

...

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

~~**§ 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.~~

~~**§ 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.~~

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration

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

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

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

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

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

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

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

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

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

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

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

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

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

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§ 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,~~ 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 reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these ~~costs.~~ costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

...

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. 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~~ Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work.

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Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines identified prior to the start of work or shown on the construction documents during the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys ~~describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

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

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

...

~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
LTISD Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.
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The ~~Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The~~ Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection and Testing

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Owner shall provide the Construction Manager ~~with~~ a copy of the ~~scope of services in the executed~~ executed agreement between the Owner and the Architect, and any further modifications to ~~the Architect's scope of services in the agreement.~~the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

...

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

Lump sum of $125,000

§ 5.1.2 ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~
~~*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*~~

Intentionally deleted.

~~**Individual or Position** **Rate**~~

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~( )~~ 12 months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

~~**§ 5.2 Payments**~~
~~**§ 5.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.~~

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

§ 5.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~% within~~ 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. ~~upon presentation of the Construction Manager's invoice.~~

...

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

...

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2.10 % of the Cost of Work

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

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Only by agreement of Owner's Board of Trustees.

...

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

~~**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed ( ) percent (%) of 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.)*~~

~~**§ 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 paid by the Construction Manager without reimbursement by the Owner.~~

~~**§ 6.3 Changes in the Work**~~
~~**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

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

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein.

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Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 90 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

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.4 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

~~**§ 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.~~

§ 6.1.6 Other:

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

N/A

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

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

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

§ 6.3 Changes in the Work

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~~**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

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

~~**§ 7.1 Costs to Be Reimbursed**~~

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

~~**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.~~

§ 6.3.1.1 Intentionally deleted.

~~**§ 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.~~

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

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior 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 the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. 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 written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

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~~**§ 7.2 Labor Costs**~~

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior ~~approval, at off-site workshops.~~written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

~~**§ 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 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.)*~~

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

§ 7.2.2 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 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 attributable to and required for the Work and only as approved by Owner.

§ 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 for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and~~ subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on

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the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.
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§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.
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§ 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.

...

~~**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

~~**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

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

~~**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

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

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

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Documents.

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Intentionally 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 ~~Costs of document reproductions and delivery charges.~~

§ 7.6.8 ~~Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

§ 7.6.9 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

§ 7.6.10 ~~Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

§ 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.~~

§ 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 Costs of document reproductions and delivery charges

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7.1 Other costs incurred in the performance of the Work, ~~with the Owner's prior approval.~~that are directly attributable to and required for the Work and are approved by the Owner.

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

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Manager to pay such costs, unless such costs are excluded by the provisions of Section ~~7.9.~~7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

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...

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the ~~Owner~~ Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

...

.2 ~~Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~Intentionally deleted;

...

.6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ 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;

...

.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.9 Costs for services incurred during the Preconstruction ~~Phase.~~Phase;

.10 Delay damages or claims; and

.11 Construction Manager's Fee in Section 6.1.2

...

§ 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.~~ Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

§ 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.

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§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this ~~Agreement,~~ Agreement and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a

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subcontract is awarded on the basis of ~~cost plus~~ 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.

~~**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.~~

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

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

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

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

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

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

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

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

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

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if

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Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

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

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§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include unconditional prior month lien releases from each subcontractor and supplier demonstrating proof of payment by the Construction Manager. The Construction Manager shall promptly pay

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all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values~~ values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

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

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the 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~~ classification on the schedule of values.

...

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

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.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditors~~ auditors, accountants, or other representatives in such documentation; ~~and~~

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

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

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

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

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.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

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

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

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§ 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.)~~due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

...

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

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

...

N/A

...

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the ~~Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction

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Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

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

§ 11.1.12 In ~~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's auditors acting in the sole interest of the Owner.~~submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

...

§ 11.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum,~~ for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the ~~Contract, except for~~ Contract including the Construction Manager's responsibility to correct ~~Work as provided in Article 12 of AIA Document A201–2017,~~ Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; and~~Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect ~~in accordance with Section 11.2.2.2.~~and approved by the Program Manager, if applicable;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within ~~30~~ 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

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

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~~**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 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 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

~~**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~**§ 11.3 Interest**~~

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
~~*(Insert rate of interest agreed upon, if any.)*~~

~~%~~

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

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

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all

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Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

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

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

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

.3 Add the Construction Manager's Fee.

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

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

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

.7 Subtract all previous payments made by the Owner.

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

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

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

§ 11.3 Interest

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

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§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute ~~resolution, and Section 12.1.2 of this Agreement shall not apply.~~resolution.

§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties~~

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~~appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~Intentionally deleted.
~~(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~
§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

...

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

...

[ ] ~~Arbitration pursuant to Article 15 of AIA Document A201–2017~~Intentionally deleted.

[**X**] 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.~~jurisdiction with proper venue being the county where the Project site is located.

...

§ 13.1
~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 ~~If~~ 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 less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction ~~Manager's~~ Manager 's compensation under this Section exceed the compensation set forth in ~~Section 5.1.~~Section 5.1.
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forth in ~~Section 5.1.~~Section 5.1.

...

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

...

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

~~**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;~~

~~**.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~

~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~

~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.~~

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;

.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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N/A

...

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

...

§ 14.1 ~~Terms~~ Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

...

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, 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~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

~~**§ 14.2.2** 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.~~This

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does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted.

§ 14.3 ~~Insurance and Bonds~~Insurance and Bonds

§ 14.3.1 The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

~~§ 14.3.1 Preconstruction Phase~~

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

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~~**§ 14.3.1.1** Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.~~

§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

~~**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

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

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

~~**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

~~**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.~~

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

~~**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.~~

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

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§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

~~**§ 14.3.1.6 Other Insurance**~~

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

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

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

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 Notify the Owner in writing by certified mail or persona 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 items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that 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.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Intentionally Deleted.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

~~**Coverage** **Limits**~~

~~**§ 14.3.1.7 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.~~

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

~~**§ 14.3.2 Construction Phase**~~
~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between~~

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~~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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~
~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

§ 14.5.1 Criminal History Checks
Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 14.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

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

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

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

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

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

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

§ 14.5.16 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree

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ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.
§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

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

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

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.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

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

§ 15.2 The following documents ~~comprise the Agreement:~~are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended

.2 ~~AIA Document A133™–2019,~~ Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 ~~AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, as amended

.5 ~~Building Information Modeling Exhibit, if completed:~~

Exhibit B – Prevailing Wage Rate

.6 ~~Other Exhibits:~~

~~*(Check all boxes that apply.)*~~

~~[–] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~

~~(Insert the date of the E234-2019 incorporated into this Agreement.)~~

_____

~~[–] Supplementary and other Conditions of the Contract:~~

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Document	Title	Date	Pages

.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.)

...

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **AMERICAN CONSTRUCTORS**

...

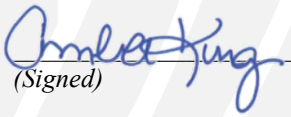
Joe Charlton, COO

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:12:41 ET on 02/12/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/12/2025

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

CMR 23-01 New High School No. 2
Reimers Peacock Road

THE OWNER:
(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

THE ARCHITECT:
(Name, legal status and address)

VLK Architects, Inc
2700 Vía Fortuna #230
Austin, Texas 78746
Telephone: (512) 807-3145

THE CONTRACTOR:

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026

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.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written 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.

§ 1.1.3 The Work

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

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports (only as specifically detailed in the plans and specifications), Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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§ 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 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.

(Paragraphs deleted)
§ 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
Intentionally deleted.

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

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

1.1.10.2 Calendar Day
A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

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enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included a reasonable interpretation of the preponderance of information contained in the documents unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

§ 1.2.4 Precedence of the Contract Documents

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

- **.1** Contract Modifications signed by Contractor and Owner.
- **.2** Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- **.3** Agreement – AIA Document A133-2019, as modified by the Owner for the Project
- **.4** General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- **.5** Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the preponderance of the information.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service.

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

§ 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

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

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion by more than thirty (30) days; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

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2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Intentionally deleted.

§ 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.

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a
ten 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 or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the

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Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent 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 Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. 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, or for price escalations in the marketplace. 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 either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- **.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 Architect or 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.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as

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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.

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.

3.2.6 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.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent, or other competent representative, shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

§ 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 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the

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agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review contractor 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 Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

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

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

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

3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.1.1 PREVAILING WAGES
The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 Intentionally deleted.

§ 3.4.2.1 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 substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 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 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 confirms 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 in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any

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prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 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, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

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§ 3.5.3 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 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 from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

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

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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

§ 3.6 Taxes

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 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

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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.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 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. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

(Paragraphs deleted)

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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

3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration

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(OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 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, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 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 overhead and profit 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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

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

§ 3.9.3 The Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The

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initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the 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.

§ 3.10.2 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 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 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

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The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available the 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 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.

3.11.1 Contractor shall make available, at the Project site, 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.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect 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.

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§ 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.

§ 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 approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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 not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 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. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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§ 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. 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 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than two times 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, 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 may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 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

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

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

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

§ 3.18.2 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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 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 SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE PARTIES.

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

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

- **.1** that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- **.2** that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

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.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

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

§ 3.21 ANTITRUST VIOLATION

§ 3.21.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Intentionally deleted.

§ 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 Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the 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. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct

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communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the 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.

§ 4.2.6 The Architect or the Owner 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 or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 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.

§ 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 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 decisions 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.

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§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 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 at no additional expense to the Owner.

4.2.15 The Architect may appoint an employee or other person to assist the Architect 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 from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same

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. 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.

§ 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. 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.

§ 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.

§ 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, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly 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.

§ 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.

§ 5.3 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

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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.

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

(Paragraphs deleted)

§ 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; and

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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. Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by 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, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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§ 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.

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

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

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

§ 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 the Architect 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 by the Architect alone.

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

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost.
.2 For the Contractor, for the Work performed by the Contractor's Subcontractors4.85% of the amount due the Subcontractors.
.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.
.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

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.1 The change in the Work;
.2 The amount of the adjustment, if any, to the Contract Sum; and
.3 The extent of adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and 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 determine 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 Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and 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, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

§ 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 and 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.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

§ 7.4 Minor Changes in the Work

The Architect may 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 shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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 shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than ninety (90) days after the date of Substantial Completion.

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

§ 8.2 Progress and Completion

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

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

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

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are 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.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made in accordance with Article 15.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Agreement does not preclude recovery of damages for delay by the Contractor for delay, disruption or acceleration.

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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all

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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 other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

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

§ 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.

§ 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.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect or the Owner 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 or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including, but not limited to, loss resulting from acts and omissions described in Section 3.3.2, because of:

- **.1** Defective Work not remedied;
- **.2** Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** Failure of the Contractor to make payments properly to Subcontractors 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** Repeated failure to carry out the Work in accordance with the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

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

§ 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.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

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§ 9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. 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. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. 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 Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

§ 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

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 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; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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§ 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 responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

§ 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 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

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portion substantially complete, the Contractor shall prepare and submit a list to the Architect 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.

§ 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 expressly 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 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner or the Owner's property might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

§ 9.10.4

(Paragraphs deleted)

Intentionally deleted.

§ 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.

§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

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

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The 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 the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. .

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

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§ 10.2.5 CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18. CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE ALL PARTIES.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be maintaining a safe and healthy work site. 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.

(Paragraphs deleted)

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 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.

§ 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, 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 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of

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tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a 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 deleted.

§ 10.4 Emergencies

§ 10.4.1 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

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Intentionally deleted.

§ 11.1.4 Intentionally deleted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally deleted.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Intentionally deleted.

(Paragraph deleted)

§ 11.3.2 Intentionally deleted.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Intentionally deleted.

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§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

(Paragraph deleted)

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

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

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

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

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

§ 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.

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ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 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 § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written 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 Owner shall provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 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.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents.

.4 Intentionally deleted.

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an 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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

.6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, 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 days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

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

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

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written 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 related to the Project.

§ 14.4.3 In case of termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Architect is required.

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§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 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 the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- **.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- **.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

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§ 15.2.2 The Architect 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 Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Intentionally deleted. .

§ 15.2.6.1 Intentionally deleted.

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

§ 15.2.8 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 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.
§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.
15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

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.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration

§ 15.4.1 The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

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

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

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§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

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This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**AMERICAN CONSTRUCTORS**
By:	**By:**
Signature	**Signature**
Pam Sanchez, Acting Superintendent	Joe Charlton, COO
Date:	Date:

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CMR 23-01 New High School No. 2
Reimers Peacock Road

...

(Name, legal status and address)

Lake Travis ISD
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Austin, TX 78738
512-533-6300

...

(Name, legal status and address)

VLK Architects, Inc
2700 Vía Fortuna #230
Austin, Texas 78746
Telephone: (512) 807-3145

THE CONTRACTOR:

American Constructors
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512-328-2026

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16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

PAGE 10

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. ~~The Contract may~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

...

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

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Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports (only as specifically detailed in the plans and specifications), Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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~~**§ 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.~~

§ 1.1.7 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.

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

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor

All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

1.1.10 Miscellaneous Other Words

1.1.10.1 Business Day

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

1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

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§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included a reasonable interpretation of the preponderance of information contained in the documents unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

§ 1.2.4 Precedence of the Contract Documents

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

.1 Contract Modifications signed by Contractor and Owner.
.2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
.3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project
.4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
.5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the preponderance of the information.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

...

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' reserved rights.~~any reserved rights

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

~~**§ 1.8 Building Information Models Use and Reliance**~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's~~

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~~sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.8 Building Information Models Use and Reliance

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

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The ~~Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1,~~ Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion by more than thirty (30) days; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner ~~shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

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§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract 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. If the Owner fails to provide such evidence, as~~

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~~required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~Intentionally deleted.

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~Intentionally deleted.

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

...

§ 2.3.5 ~~The Owner shall furnish information~~ 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.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 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.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

...

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may 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, except to the extent required by Section 6.1.3.~~**§ 2.4.1** If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day~~ **§ 2.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a
ten day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect~~ The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a

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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. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 3.1.2 The Contractor shall perform the Work in ~~accordance with the Contract Documents.~~a good and workmanlike manner except to the extent 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 Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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.

...

§ 3.2.1 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. 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, or for price escalations in the marketplace. 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 either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4,~~ 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 and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

.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 Architect or 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.

...

§ 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of ~~Sections 3.2.2~~ Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. 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.

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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.

3.2.6 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.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

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3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent, or other competent representative, shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

...

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

3.3.6 The Contractor shall review contractor 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 Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not

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interfere with the use and occupancy of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

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

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

3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

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3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

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§ 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.~~Intentionally deleted.

§ 3.4.2.1 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 substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 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 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 confirms 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 in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported

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disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

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§ 3.5.3 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 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 from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

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

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such

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prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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

~~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.~~**§ 3.6.1** The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7.2 ~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 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. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

~~§ 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 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. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only,

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and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract ~~Sum and Contract~~ Time arising from the existence of such remains or features may be made as provided in Article 15.

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

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

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.2 Contractor's costs for ~~unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts~~ overhead and profit 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~~ Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

...

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be

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employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

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

§ 3.9.3 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, which shall not unreasonably be withheld or delayed.~~Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information 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.~~contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

.4 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for

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completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the 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.

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§ 3.10.3 ~~The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

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The Contractor shall make ~~available, at the Project site,~~ available the 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 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.

3.11.1 Contractor shall make available, at the Project site, 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.
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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy~~ not be responsible for the adequacy of the performance and design criteria ~~provided~~ specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this ~~Section 3.12.10,~~ 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.

...

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~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.~~**§ 3.13.1** 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. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.
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3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

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

...

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§ 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.

...

§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER OR OWNER'S CONSULTANTS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 ~~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.~~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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 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 SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER. 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

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CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE PARTIES.

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

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

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

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

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

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

§ 3.21 ANTITRUST VIOLATION

§ 3.21.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

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§ 4.1.2 ~~Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~Intentionally deleted.

...

§ 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.~~ Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in 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. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the ~~Project. Communications~~ Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.6 The Architect or the Owner 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 or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into

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compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

...

§ 4.2.11 ~~The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 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.~~information at no additional expense to the Owner.

4.2.15 The Architect may appoint an employee or other person to assist the Architect 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 from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same

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§ 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, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly 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.

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§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

~~**§ 5.4.1** 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 for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and~~
- ~~**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.~~

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~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~

~~**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall 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. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 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; and

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may, in the Owner's sole discretion, 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.

...

§ 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~~ Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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§ 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.~~

...

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost.

.2 For the Contractor, for the Work performed by the Contractor's Subcontractors4.85% of the amount due the Subcontractors.

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

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.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2.1 A Change Order is a written instrument ~~prepared by the Architect and signed by the Owner, Contractor, and Architect~~ initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

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

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

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

...

.4 As provided in ~~Section 7.3.4.~~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 determine 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.~~ Section 7.1.4. In such case, and also under ~~Section 7.3.3.3,~~ Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and 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~~ Section 7.3.4 shall be limited to the following:

...

.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the ~~change.~~change only if the adjustment causes an extension of the Contract Time.

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§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost ~~as confirmed by the Architect.~~ plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

...

§ 8.1.2 The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with ~~Section 9.8.~~Section 9.8.

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8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than ninety (90) days after the date of Substantial Completion.

...

§ 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.~~Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.
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§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are 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.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 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 employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made in accordance with Article 15.

...

§ 8.3.3 This ~~Section 8.3~~ Agreement does not preclude recovery of damages for delay by ~~either party under other provisions of the Contract Documents.~~the Contractor for delay, disruption or acceleration.

...

§ 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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~~

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~~substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under ~~Section 9.2,~~ Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect ~~retainage if provided for in the Contract Documents.~~other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in ~~Section 7.3.9,~~ Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.
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9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 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.~~Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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.

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

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§ 9.5.1 The Architect or the Owner 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~~ 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.~~ 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 or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, ~~including~~ including, but not limited to, loss resulting from acts and omissions described in ~~Section 3.3.2, because of~~Section 3.3.2, because of:

- **.1** ~~defective~~ Defective Work not remedied;
- **.2** ~~third~~ 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~~ Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** ~~reasonable~~ Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** ~~damage~~ Damage to the Owner or a Separate Contractor;
- **.6** ~~reasonable~~ Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- **.7** ~~repeated~~ Repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

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

...

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

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§ 9.6.2 The Contractor ~~shall pay each Subcontractor, no later than seven days after~~ shall, within ten (10) days following receipt of payment from the Owner, ~~the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.~~pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. 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.

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§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, 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. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 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.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

...

§ 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.~~

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

...

§ 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 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 as provided under ~~Section 9.8.2.~~ 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.

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§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly 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.

...

§ 9.10.1 ~~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~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon,

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the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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.~~certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 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~~ The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other ~~indebtedness~~ liabilities connected with the Work for which the Owner or the Owner's property might be responsible ~~or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may~~ have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall 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.~~discharge any such lien or indemnify the Owner from liability.

§ 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 without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it~~ The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of ~~Claims.~~any claims by the Owner.

§ 9.10.4 ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~

~~.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

~~.2 failure of the Work to comply with the requirements of the Contract Documents;~~

~~.3 terms of special warranties required by the Contract Documents; or~~

~~.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~Intentionally deleted.

...

§ 9.11 AUDIT

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§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

~~**§ 10.1 Safety Precautions and Programs**~~

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

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

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

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

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

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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§ 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

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against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. .

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18. CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE ALL PARTIES.

§ 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.~~ maintaining a safe and healthy work site. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
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~~§ 10.2.8 Injury or Damage to Person or Property~~
~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

§ 10.2.8 Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

...

§ 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

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

§ 10.3.4 The Owner shall not be responsible under this ~~Section 10.3~~ Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a 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,~~ Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

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~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~**§ 10.4.1** 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.

...

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

§ 11.1.4 ~~**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~~

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~~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.~~Intentionally deleted.

...

§ 11.2.1 ~~The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ Intentionally deleted.

§ 11.2.2 ~~Failure to Purchase Required Property Insurance.~~ ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ Intentionally deleted.

§ 11.2.3 ~~Notice of Cancellation or Expiration of Owner's Required Property Insurance.~~ ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~ Intentionally deleted.

...

§ 11.3.1 ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (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 they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 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.~~ Intentionally deleted.

~~§ 11.3.2~~ ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in~~

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~~accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.3.2 Intentionally deleted.

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~Intentionally deleted.

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§ 11.5.1 ~~A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~Intentionally deleted.

§ 11.5.2 ~~Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~Intentionally deleted.

...

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

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

§ 12.1.2 If a portion of the Work has been covered 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~~ may 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~~ Guaranteed Maximum Price 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.

...

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

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§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion ~~thereof or after the date for commencement of warranties established under Section 9.9.1, or~~ thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner
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§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

§ 12.2.5 Nothing contained in this ~~Section 12.2~~ 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~~ Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such

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capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

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The ~~Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

...

§ 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,~~ 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.

...

§ 13.4.1 ~~**§ 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.~~ **§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written 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~~ Owner shall provide or contract 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~~

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~~such procedures.~~ approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.
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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 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.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

...

§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees,~~ Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:
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.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~~ the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract ~~Documents; or~~Documents.

.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Intentionally deleted.

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ 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,~~ Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is ~~less.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in ~~Section 14.1.1~~ Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an 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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in ~~Section 14.1.3.~~Section 14.1.3.

...

.2 fails to make payment to Subcontractors ~~or suppliers~~ for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

~~.4~~ .6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

.2 Accept assignment of subcontracts pursuant to ~~Section 5.4;~~ Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

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

§ 14.3.2 The Contract Sum and Contract Time ~~shall be adjusted for~~ may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1.~~ delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the ~~extent~~extent:

.1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted,~~ was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause.~~cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor ~~shall~~shall:

...

.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.~~orders related to the Project.

§ 14.4.3 In case of ~~such~~ termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

...

~~§ 15.1.2 Time Limits on Claims~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

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§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such ~~Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the ~~Initial Decision Maker~~ Architect is required.
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§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7~~ Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the ~~Initial Decision Maker's~~ Owner's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15. ~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price
If the Contractor wishes to make a Claim for additional cost or an increase in the ~~Contract Sum,~~ Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.
.

...

§ 15.1.6.2 ~~If adverse~~ The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a ~~Claim~~ claim for additional time, such Claim shall be documented by data substantiating ~~that weather conditions were abnormal for the period of time,~~ such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

...

§ 15.2.1 ~~Claims, 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 Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless~~

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~~otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the Claim take one or more of the following actions: (1) request additional supporting data from the ~~claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect 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 Owner's expense.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

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

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~Intentionally deleted. .

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~**Waiver of Lien**

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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.

...

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

- **.1** the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and
- **.2** the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

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§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry~~

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~~Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

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

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

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§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

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This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**AMERICAN CONSTRUCTORS**
By:	**By:**
Signature	**Signature**
Pam Sanchez, Acting Superintendent	Joe Charlton, COO
Date:	Date:

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~**§ 15.4.4 Consolidation or Joinder**~~

~~**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

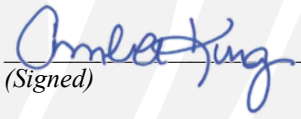
~~**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:13:07 ET on 02/12/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/12/2025

(Dated)

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Construction Agreements between Lake Travis ISD and American Constructors for Lake Travis High School Competition Gym and Fine Arts Addition Project

RECOMMENDED ACTION
Approve the construction agreements between Lake Travis ISD and American Constructors for Lake Travis High School competition gym and Fine Arts addition project and authorize the Acting Superintendent or designee to execute the agreements.

RATIONALE
In December 2023, the Board approved American Constructors as General Contractor for the construction of the new Lake Travis High School competition gym and Fine Arts addition. The administration is seeking approval to execute the agreements with American Constructors.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
American Constructors CMR 23-03 A133-2019
American Constructors CMR 23-03 A201-2017

MEETING DATE
February 19, 2025

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 day of in the year 2025
(In words, indicate day, month, and year.)

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

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

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

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026
for the following Project:
(Name, location, and detailed description)

Competition Gym and Fine Arts Addition
Facilities CMR 23-03

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

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

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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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Request for Proposal Bid #24-003; see also Exhibit A, GMP Amendment

§ 1.1.2 The Project's physical characteristics:
(Paragraph deleted)
New Multi-story Gymnasium and Fine Arts Addition located on the Lake Travis High School campus

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

Approximate Construction Budget $60,000,000

§ 1.1.4 The Owner's anticipated design and construction milestone dates:
(Paragraphs deleted)
N/A

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

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

(Paragraph deleted)
§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Request for Proposal Bid #24-003; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

LTISD Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

§ 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.)
Architect

§ 1.1.10 The Architect will retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Civil Engineer:
Malone/Wheeler, Inc.
5113 SW Parkway, Suite 260
Austin, TX 78735

.5 Landscape
Blu Fish Collaborative, Inc.
3607 South Lamar Blvd
Austin, Texas 78704

The Owner shall retain the following consultants:

.1 Technology / Security
Al Vickers Technology Consulting
345 S. Commons Ford Rd.
Austin, TX 78733

.2 Surveyor

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Early Surveying

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

Cody Holt
Claycomb & Associates Architects
5113 Southwest Pkwy, Suite 100
Austin, TX 78735
Telephone: 512-263-7940

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

Joe Charlton
American Constructors
11900 West Parmer Lane, Suite 200
Cedar Park, TX 78613
jcharlton@americanconstructors.com

§ 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.)

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

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

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

See Request for Proposal Bid #24-003; see also Exhibit A, GMP Amendment

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and

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integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: LTISD Superintendent

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

(Paragraphs deleted)

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

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phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 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, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.4 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 3.1.5 Phased Construction

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The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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 suggest 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 inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget provided the budget is determined to be reasonable.

§ 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 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval, which may consist of a verification that all specified requirements will be met.

§ 3.1.11.2 The Construction Manager shall develop bidders ' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a

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special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

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

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: 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 other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;
.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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

§ 3.1.11.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, 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 this Agreement.

§ 3.1.11.9 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, according to Section 7.8.2.

§ 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

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items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall 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. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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. Why delete this statement?

§ 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 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; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than ninety (90) days after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

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§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. 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. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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

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

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

§ 3.3 Construction Phase

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§ 3.3.1 General

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

(Paragraphs deleted)

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration

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

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

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

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

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

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

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

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

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

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

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

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

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

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

(Paragraph deleted)
§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines identified prior to the start of work or shown on the construction documents during the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

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

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

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

§ 4.2 Owner's Designated Representative

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
LTISD Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

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

§ 4.3 Architect

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

§ 4.4 Inspection and Testing

Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Paragraph deleted)
Lump sum of $50,000

§ 5.1.2

(Paragraphs deleted)
Intentionally deleted.
(Table deleted)

§ 5.1.2.1 Intentionally deleted.

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§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 12 months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
(Paragraphs deleted)

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date sh
(Paragraph deleted)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 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.)

4.85 % of the Cost of Work

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

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

Only by agreement of Owner's Board of Trustees.

§ 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 A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

(Paragraphs deleted)

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain.

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Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 90 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.

.4 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 6.1.6 Other:

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

N/A

(Paragraph deleted)

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

(Paragraphs deleted)

§ 6.3 Changes in the Work

(Paragraph deleted)

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

(Paragraph deleted)

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

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. 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 written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 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.

(Paragraph deleted)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

(Paragraphs deleted)

§ 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 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 attributable to and required for the Work and only as approved by Owner.

§ 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 for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall

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be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

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

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

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

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

§ 7.5.1 Costs of transportation, 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 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 approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 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

(Paragraphs deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

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§ 7.6.5.1 Intentionally deleted.

(Paragraphs 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 Costs of document reproductions and delivery charges

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, that are directly attributable to and required for the Work and are approved by the Owner.

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

§ 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 specific 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed
§ 7.9.1 The Cost of the Work shall not include the items listed below:

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.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
.2 Intentionally deleted;
.3 Expenses of the Construction Manager's principal office and offices other than the site office;
.4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
.6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
.7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
.9 Costs for services incurred during the Preconstruction Phase;
.10 Delay damages or claims; and
.11 Construction Manager's Fee in Section 6.1.2

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

(Paragraph deleted)

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 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.

(Paragraphs deleted)

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

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

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

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

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

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

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

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

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

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

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs

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incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten years after the date of Final Completion, 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, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include unconditional prior month lien releases from each subcontractor and supplier demonstrating proof of payment by the Construction Manager. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

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

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

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) classification on the schedule of values.

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

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

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

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

- **.1** The aggregate of any amounts previously paid by the Owner;
- **.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- **.3** Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- **.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- **.5** The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation;
- **.6** Retainage withheld pursuant to Section 11.1.8.
- **.7** Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)
- **.8** The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
  - **.1** If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.
  - **.2** If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.

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

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

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

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

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

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

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

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

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

§ 11.2 Final Payment

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

- **.1** the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- **.3** a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable;
- **.4** The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and
- **.5** Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

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

(Paragraphs deleted)

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

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

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the

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Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

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

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

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

.3 Add the Construction Manager's Fee.

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

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

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

.7 Subtract all previous payments made by the Owner.

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

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

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

§ 11.3 Interest

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

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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§ 12.1.2 Intentionally deleted.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Intentionally deleted.

[**X**] Litigation in a court of competent jurisdiction

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction with proper venue being the county where the Project site is located.

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 less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in 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 less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 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 Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such

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steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

(Paragraphs deleted)
§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;
.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(*Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.*)

N/A

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

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§ 14.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

§ 14.2 Successors and Assigns

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

§ 14.2.2 Intentionally deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1 The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

(Paragraphs deleted)

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

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§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

(Paragraph deleted)
§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

(Paragraph deleted)
§ 14.3.2.5.1.4 Services include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

(Paragraph deleted)
§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

(Paragraph deleted)
§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

(Paragraph deleted)
§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

(Paragraphs deleted)
§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

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

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 Notify the Owner in writing by certified mail or persona 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 items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that 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.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Intentionally Deleted.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site

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and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

(Paragraphs deleted)
(Table deleted)

§ 14.5 Other provisions:

§ 14.5.1 Criminal History Checks

Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 14.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

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§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

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

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

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

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

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written

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consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

§ 14.5.16 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

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

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

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.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended

.2 Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended

.5

(Paragraphs deleted)

Exhibit B – Prevailing Wage Rate

(Paragraphs deleted)

(Paragraph deleted)

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(Table deleted)

*(Paragraphs deleted)*This Agreement is entered into as of the day and year first written above.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**AMERICAN CONSTRUCTORS**
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Pam Sanchez, Acting Superintendent *(Printed name and title)*	Joe Charlton, COO *(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A133® – 2019

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PAGE 1

AGREEMENT made as of the day of in the year 2025

...

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026

...

Competition Gym and Fine Arts Addition
Facilities CMR 23-03

...

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

PAGE 2

EXHIBIT B ~~INSURANCE AND BONDS~~**PREVAILING WAGE RATES**

...

See Request for Proposal Bid #24-003; see also Exhibit A, GMP Amendment

...

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

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New Multi-story Gymnasium and Fine Arts Addition located on the Lake Travis High School campus

...

~~(Provide total and, if known, a line item breakdown.)~~
Approximate Construction Budget $60,000,000

§ 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:~~

~~**.4** Other milestone dates:~~

N/A

N/A

...

N/A

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

...

See Request for Proposal Bid #24-003; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following ~~representative~~ representative(s) in accordance with Section 4.2:

...

LTISD Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738

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512-533-5963

...

Architect

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

...

.1 ~~Geotechnical~~ Civil Engineer:
Malone/Wheeler, Inc.
5113 SW Parkway, Suite 260
Austin, TX 78735

.5 Landscape
Blu Fish Collaborative, Inc.
3607 South Lamar Blvd
~~**.2** Civil Engineer:~~Austin, Texas 78704

The Owner shall retain the following consultants:

.1 Technology / Security
Al Vickers Technology Consulting
345 S. Commons Ford Rd.
~~**.3** Other, if any:~~Austin, TX 78733

~~(List any other consultants retained by the Owner, such as a Project or Program Manager.)~~

.2 Surveyor
Early Surveying

PAGE 4

Cody Holt
Claycomb & Associates Architects
5113 Southwest Pkwy, Suite 100
Austin, TX 78735
Telephone: 512-263-7940

...

Joe Charlton
American Constructors
11900 West Parmer Lane, Suite 200
Cedar Park, TX 78613

...

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

...

See Request for Proposal Bid #24-003; see also Exhibit A, GMP Amendment

...

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project

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Manual, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price ~~Amendment~~ Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: LTISD Superintendent

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

PAGE 5

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~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, ~~shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.~~ as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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~~**§ 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. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.~~

~~**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**~~

~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

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

...

§ 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;~~ construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written~~ building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission,

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~~reliance, and exchange of digital data, including building information models for the Project.~~and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

...

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~~ Architect 's services, other Owner consultants' services, and the ~~Owner's~~ 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

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The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

...

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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~~ suggest 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 inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective ~~action.~~action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget provided the budget is determined to be reasonable.

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§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service,~~ 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.

...

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and ~~approval.~~approval, which may consist of a verification that all specified requirements will be met.

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

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§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: 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 other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

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

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

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

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

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

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§ 3.1.11.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, 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 this Agreement.

§ 3.1.11.9 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, according to Section 7.8.2.

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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.~~Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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.~~Why delete this statement?

...

~~.2~~ ~~A .~~**2**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; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

~~.3~~ ~~A .~~**3**A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~

.5 ~~A date by which the Owner must accept the Guaranteed Maximum Price.~~The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than ninety (90) days after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's

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approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 ~~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.~~ The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. 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. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~any taxes from which Owner is exempt.

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

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

§ 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~~

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~~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.~~

~~**§ 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.~~

§ 3.3.1.2 Intentionally deleted.

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

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

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

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

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

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

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

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, 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, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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

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

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

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

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

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§ 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,~~ 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 reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these ~~costs.~~ costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

...

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. 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~~ Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines identified prior to the start of work or shown on the construction documents during the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys ~~describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~ as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

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

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anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner ~~shall~~ may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.
PAGE 13

~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
LTISD Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

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

...

The ~~Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The~~ Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection and Testing
Owner shall provide the Construction Manager ~~with~~ a copy of the ~~scope of services in the executed~~ executed agreement between the Owner and the Architect, and any further modifications to ~~the Architect's scope of services in the agreement.~~the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

...

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

Lump sum of $50,000

§ 5.1.2 ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~
~~*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*~~

Intentionally deleted.

~~Individual or Position~~	~~Rate~~

§ 5.1.2.1 ~~Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions,~~

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~~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.~~Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~( )~~ 12 months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

~~**§ 5.2 Payments**~~

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date sh

~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~%~~

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

...

4.85 % of the Cost of Work

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

...

Only by agreement of Owner's Board of Trustees.

...

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

~~**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of 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.)*~~

~~**§ 6.1.7** Other:~~

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~~*(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 paid by the Construction Manager without reimbursement by the Owner.~~

~~**§ 6.3 Changes in the Work**~~

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

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

~~**§ 6.3.2** 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.~~

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

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 90 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to

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achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.

.4 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 6.1.6 Other:

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

N/A

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

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

~~**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

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

~~**§ 7.1 Costs to Be Reimbursed**~~

§ 6.3 Changes in the Work

~~**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.~~

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

~~**§ 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.~~

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

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Construction, as amended by the parties.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior 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 the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. 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 written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

~~**§ 7.2 Labor Costs**~~

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior ~~approval, at off-site workshops.~~written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

~~**§ 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 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.)*~~

~~**§ 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 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.~~

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

§ 7.2.2 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 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 attributable to and required for the Work and only as approved by Owner.

§ 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 for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and~~ subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.
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§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

...

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

...

~~**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

~~**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

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

~~**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

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

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

~~**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Intentionally 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** Costs of document reproductions and delivery charges.~~

~~**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

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~~**§ 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.~~

§ 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 Costs of document reproductions and delivery charges

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7.1 Other costs incurred in the performance of the Work, ~~with the Owner's prior approval.~~that are directly attributable to and required for the Work and are approved by the Owner.

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

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Manager to pay such costs, unless such costs are excluded by the provisions of Section ~~7.9.~~7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

...

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the ~~Owner~~ Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

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.2 ~~Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~Intentionally deleted;

...

.6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ 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;

...

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.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.9 Costs for services incurred during the Preconstruction ~~Phase.~~Phase;

.10 Delay damages or claims; and

.11 Construction Manager's Fee in Section 6.1.2

...

§ 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.~~ Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

§ 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.

...

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this ~~Agreement,~~ 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~~ 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.

~~**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.~~

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

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

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

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

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

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

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

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

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

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

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

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

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§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the __ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the __ day of the __ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than __ (__) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include unconditional prior month lien releases from each subcontractor and supplier demonstrating proof of payment by the Construction Manager. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values~~ values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the 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~~

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~~the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in~~ classification on the schedule of values.

...

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

...

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditors~~ auditors, accountants, or other representatives in such documentation; ~~and~~

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

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

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

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

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

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

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§ 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.)~~due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

...

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

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

...

N/A

...

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the ~~Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

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

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

§ 11.1.12 In ~~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's auditors acting in the sole interest of the Owner.~~submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

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§ 11.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum,~~ for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the ~~Contract, except for~~ Contract including the Construction Manager's responsibility to correct ~~Work as provided in Article 12 of AIA Document A201–2017,~~ Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; and~~Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect ~~in accordance with Section 11.2.2.2.~~and approved by the Program Manager, if applicable;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within ~~30~~ 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

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

~~**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 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 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

~~**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~§ 11.3 Interest~~

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~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*~~

~~—%~~

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

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

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

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

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

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

.3 Add the Construction Manager's Fee.

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

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

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

.7 Subtract all previous payments made by the Owner.

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

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

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

§ 11.3 Interest

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

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§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute ~~resolution, and Section 12.1.2 of this Agreement shall not apply.~~resolution.

§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 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.~~Intentionally deleted.

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

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

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

...

[ ] ~~Arbitration pursuant to Article 15 of AIA Document A201–2017~~Intentionally deleted.

[**X**] 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.~~jurisdiction with proper venue being the county where the Project site is located.

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...

§ 13.1

~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 ~~If~~ .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 less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction ~~Manager's~~ Manager 's compensation under this Section exceed the compensation set forth in ~~Section 5.1.~~Section 5.1.

...

forth in ~~Section 5.1.~~Section 5.1.

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

...

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

~~**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;~~
- ~~**.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~
- ~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.~~

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;

.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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...

N/A

...

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

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§ 14.1 ~~Terms~~ Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

...

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, 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~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

~~**§ 14.2.2** 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.~~This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted.

§ 14.3 ~~Insurance and Bonds~~Insurance and Bonds

§ 14.3.1 The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence, combined single limit, and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

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§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

~~**§ 14.3.1 Preconstruction Phase**~~

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

~~**§ 14.3.1.1** Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.~~

§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

~~**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

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

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

~~**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide~~

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~~narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

~~**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.~~

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

.2 No later than seven days after receipt by the Construction Manager, 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.

~~**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.~~

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

~~**§ 14.3.1.6 Other Insurance**~~
~~*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*~~
§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

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

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.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 Notify the Owner in writing by certified mail or persona 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 items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that 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.

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Intentionally Deleted.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

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§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

~~**Coverage** **Limits**~~

~~**§ 14.3.1.7 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.~~

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

~~**§ 14.3.2 Construction Phase**~~
~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~
~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

§ 14.5.1 Criminal History Checks
Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 14.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history

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record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

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

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

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

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

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

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

§ 14.5.16 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

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

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any

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additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

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§ 15.1 This ~~Agreement~~ Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This ~~Agreement~~ Contract may be amended only by written instrument signed by both Owner and Construction Manager. If

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any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents ~~comprise the Agreement:~~are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended

.2 ~~AIA Document A133™–2019,~~ Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 ~~AIA Document A133™–2019, Exhibit B, Insurance and Bonds~~Intentionally Deleted.

.4 AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, as amended

.5 ~~Building Information Modeling Exhibit, if completed:~~

Exhibit B – Prevailing Wage Rate

.6 ~~Other Exhibits:~~

~~*(Check all boxes that apply.)*~~

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

~~_____~~

~~[–] Supplementary and other Conditions of the Contract:~~

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

.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.)*~~

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **AMERICAN CONSTRUCTORS**
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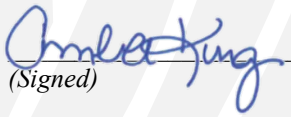
Pam Sanchez, Acting Superintendent Joe Charlton, COO

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:59:22 ET on 02/12/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/12/2025

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

Competition Gym and Fine Arts Addition
Facilities CMR 23-03

THE OWNER:
(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

THE ARCHITECT:
(Name, legal status and address)

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

THE CONTRACTOR:

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026

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.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written 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.

§ 1.1.3 The Work

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

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports (only as specifically detailed in the plans and specifications), Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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§ 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 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.

(Paragraphs deleted)
§ 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
Intentionally deleted.

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

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

1.1.10.2 Calendar Day
A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

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enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included a reasonable interpretation of the preponderance of information contained in the documents unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

§ 1.2.4 Precedence of the Contract Documents

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

- **.1** Contract Modifications signed by Contractor and Owner.
- **.2** Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- **.3** Agreement – AIA Document A133-2019, as modified by the Owner for the Project
- **.4** General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- **.5** Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the preponderance of the information.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service.

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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 any reserved rights

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

§ 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

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

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion by more than thirty (30) days; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

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2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Intentionally deleted.

§ 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.

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a
ten 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 or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the

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Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent 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 Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. 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, or for price escalations in the marketplace. 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 either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- **.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 Architect or 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.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as

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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.

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.

3.2.6 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.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent, or other competent representative, shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

§ 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 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable here from shall be deemed or construed to (1) make Contractor the

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agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review contractor 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 Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

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

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

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

3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.1.1 PREVAILING WAGES
The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 Intentionally deleted.

§ 3.4.2.1 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 substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 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 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 confirms 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 in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any

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prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 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, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

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§ 3.5.3 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 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 from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

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

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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

§ 3.6 Taxes

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 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

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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.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 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. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

(Paragraphs deleted)

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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

3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration

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(OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 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, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 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 overhead and profit 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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

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

§ 3.9.3 The Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The

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initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the 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.

§ 3.10.2 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 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 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

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The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available the 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 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.

3.11.1 Contractor shall make available, at the Project site, 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.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect 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.

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§ 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.

§ 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 approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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 not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 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. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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§ 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. 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 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than two times 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, 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 may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 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

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

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

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

§ 3.18.2 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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 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 SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE PARTIES.

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

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

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

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

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.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

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

§ 3.21 ANTITRUST VIOLATION

§ 3.21.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Intentionally deleted.

§ 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 Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the 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. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct

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communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the 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.

§ 4.2.6 The Architect or the Owner 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 or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 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.

§ 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 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 decisions 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.

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§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 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 at no additional expense to the Owner.

4.2.15 The Architect may appoint an employee or other person to assist the Architect 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 from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same

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. 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.

§ 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. 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.

§ 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.

§ 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, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly 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.

§ 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.

§ 5.3 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

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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.

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

(Paragraphs deleted)

§ 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; and

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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. Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by 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, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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§ 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.

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

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

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

§ 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 the Architect 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 by the Architect alone.

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

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost.
.2 For the Contractor, for the Work performed by the Contractor's Subcontractors4.85% of the amount due the Subcontractors.
.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.
.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

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.1 The change in the Work;
.2 The amount of the adjustment, if any, to the Contract Sum; and
.3 The extent of adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and 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 determine 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 Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and 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, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

§ 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 and 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.

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

§ 7.4 Minor Changes in the Work

The Architect may 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 shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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 shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than ninety (90) days after the date of Substantial Completion.

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

§ 8.2 Progress and Completion

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

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

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

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are 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.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made in accordance with Article 15.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Agreement does not preclude recovery of damages for delay by the Contractor for delay, disruption or acceleration.

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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all

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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 other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

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

§ 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.

§ 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.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect or the Owner 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 or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including, but not limited to, loss resulting from acts and omissions described in Section 3.3.2, because of:

- **.1** Defective Work not remedied;
- **.2** Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** Failure of the Contractor to make payments properly to Subcontractors 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** Repeated failure to carry out the Work in accordance with the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

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

§ 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.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

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§ 9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. 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. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. 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 Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

§ 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

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 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; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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§ 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 responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

§ 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 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

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portion substantially complete, the Contractor shall prepare and submit a list to the Architect 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.

§ 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 expressly 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 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner or the Owner's property might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

§ 9.10.4

(Paragraphs deleted)

Intentionally deleted.

§ 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.

§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

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

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The 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 the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. .

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

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§ 10.2.5 CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18. CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE ALL PARTIES.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be maintaining a safe and healthy work site. 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.

(Paragraphs deleted)

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 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.

§ 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, 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 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of

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tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a 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 deleted.

§ 10.4 Emergencies

§ 10.4.1 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

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Intentionally deleted.

§ 11.1.4 Intentionally deleted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally deleted.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Intentionally deleted.

(Paragraph deleted)

§ 11.3.2 Intentionally deleted.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Intentionally deleted.

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§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

(Paragraph deleted)

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

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

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

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

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

§ 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.

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ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 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 § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written 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 Owner shall provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 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.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents.

.4 Intentionally deleted.

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an 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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

.6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, 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 days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

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

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

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§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written 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 related to the Project.

§ 14.4.3 In case of termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Architect is required.

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§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 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 the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

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§ 15.2.2 The Architect 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 Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Intentionally deleted. .

§ 15.2.6.1 Intentionally deleted.

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

§ 15.2.8 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 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.
§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.
15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

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.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration

§ 15.4.1 The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

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

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

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§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

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This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**AMERICAN CONSTRUCTORS**
By:	**By:**
Signature	**Signature**
Pam Sanchez, Acting Superintendent	Joe Charlton, COO
Date:	Date:

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Additions and Deletions Report for

AIA® Document A201® – 2017

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PAGE 1

Competition Gym and Fine Arts Addition
Facilities CMR 23-03

...

(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

...

(Name, legal status and address)

Claycomb & Associates Architects
5113 Southwest Parkway, Suite 100
Austin, TX 78735
Telephone: (512) 263-7940

THE CONTRACTOR:

American Constructors
11900 W Parmer Lane #200
Cedar Park, TX 78613
512-328-2026

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15 CLAIMS AND DISPUTES

16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. ~~The Contract may~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

...

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports (only as specifically detailed in the plans and specifications), Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section

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61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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~~**§ 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.~~

§ 1.1.7 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.

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

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor

All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

1.1.10 Miscellaneous Other Words

1.1.10.1 Business Day

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

1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

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§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included a reasonable interpretation of the preponderance of information contained in the documents unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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§ 1.2.4 Precedence of the Contract Documents

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

.1 Contract Modifications signed by Contractor and Owner.

.2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.

.3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project

.4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

.5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the preponderance of the information.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

...

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' reserved rights.~~any reserved rights

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

~~**§ 1.8 Building Information Models Use and Reliance**~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.8 Building Information Models Use and Reliance

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

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information model, and each of their agents and employees.

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The ~~Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1,~~ Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion by more than thirty (30) days; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~ Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner ~~shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

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§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~ Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract 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. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~ Intentionally deleted.

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§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~Intentionally deleted.

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

...

§ 2.3.5 ~~The Owner shall furnish information~~ 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.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 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.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

...

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may 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, except to the extent required by Section 6.1.3.~~**§ 2.4.1** If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day~~ **§ 2.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a
ten day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect~~ The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 3.1.2 The Contractor shall perform the Work in ~~accordance with the Contract Documents.~~a good and workmanlike manner except to the extent 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 Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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.

...

§ 3.2.1 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. 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, or for price escalations in the marketplace. 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 either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4,~~ 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 and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

.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 Architect or 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.

...

§ 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of ~~Sections 3.2.2~~ Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. 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.

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.

3.2.6 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

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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.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.
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3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent, or other competent representative, shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

...

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

3.3.6 The Contractor shall review contractor 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 Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

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

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

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

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

3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

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3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 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.~~Intentionally deleted.

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§ 3.4.2.1 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 substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 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 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 confirms 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 in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or

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conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

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§ 3.5.3 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 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 from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

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

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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

~~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.~~**§ 3.6.1** The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7.2 ~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 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. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

~~§ 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 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. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in

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the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract ~~Sum and Contract~~ Time arising from the existence of such remains or features may be made as provided in Article 15.

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

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

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.2 Contractor's costs for ~~unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts~~ overhead and profit 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~~ Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

...

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

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§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

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

§ 3.9.3 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, which shall not unreasonably be withheld or delayed.~~Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS ($250.00) for each day.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information 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.~~contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

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

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all

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float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the 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.

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§ 3.10.3 ~~The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

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The Contractor shall make ~~available, at the Project site,~~ available the 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 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

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

3.11.1 Contractor shall make available, at the Project site, 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.
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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy~~ not be responsible for the adequacy of the performance and design criteria ~~provided~~ specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this ~~Section 3.12.10,~~ 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.

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3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~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.~~**§ 3.13.1** 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. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.
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3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

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

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§ 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.

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§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER OR OWNER'S CONSULTANTS FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 ~~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.~~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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 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 SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE

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NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE PARTIES.

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

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

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

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

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

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

§ 3.21 ANTITRUST VIOLATION

§ 3.21.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

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§ 4.1.2 ~~Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~Intentionally deleted.

...

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§ 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.~~ Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in 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. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the ~~Project. Communications~~ Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.6 The Architect or the Owner 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 or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

...

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§ 4.2.11 ~~The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 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.~~information at no additional expense to the Owner.

4.2.15 The Architect may appoint an employee or other person to assist the Architect 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 from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same

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§ 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, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly 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.

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§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

~~**§ 5.4.1** 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 for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and~~

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

~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~

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

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~~**§ 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. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 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; and

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may, in the Owner's sole discretion, 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.

...

§ 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~~ Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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§ 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.~~

...

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost.

.2 For the Contractor, for the Work performed by the Contractor's Subcontractors4.85% of the amount due the Subcontractors.

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

.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

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§ 7.2.1 A Change Order is a written instrument ~~prepared by the Architect and signed by the Owner, Contractor, and Architect~~ initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

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.2 The amount of the adjustment, if any, ~~in~~ to the Contract Sum; and
.3 The extent of ~~the adjustment, if any, in the Contract Time.~~adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

...

.4 As provided in ~~Section 7.3.4.~~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 determine 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.~~ Section 7.1.4. In such case, and also under ~~Section 7.3.3.3,~~ Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and 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~~ Section 7.3.4 shall be limited to the following:

...

.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the ~~change.~~change only if the adjustment causes an extension of the Contract Time.

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§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost ~~as confirmed by the Architect.~~ plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

...

§ 8.1.2 The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with ~~Section 9.8.~~Section 9.8.

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than ninety (90) days after the date of Substantial Completion.

...

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§ 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.~~Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.
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§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are 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.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 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 employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made in accordance with Article 15.

...

§ 8.3.3 This ~~Section 8.3~~ Agreement does not preclude recovery of damages for delay by ~~either party under other provisions of the Contract Documents.~~the Contractor for delay, disruption or acceleration.

...

§ 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract

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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. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under ~~Section 9.2,~~ Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect ~~retainage if provided for in the Contract Documents.~~other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in ~~Section 7.3.9,~~ Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.
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9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 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.~~Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of

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lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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§ 9.5.1 The Architect or the Owner 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~~ 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.~~ 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 or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, ~~including~~ including, but not limited to, loss resulting from acts and omissions described in ~~Section 3.3.2, because of~~Section 3.3.2, because of:

- **.1** ~~defective~~ Defective Work not remedied;
- **.2** ~~third~~ 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~~ Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** ~~reasonable~~ Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** ~~damage~~ Damage to the Owner or a Separate Contractor;
- **.6** ~~reasonable~~ Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- **.7** ~~repeated~~ Repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

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

...

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor ~~shall pay each Subcontractor, no later than seven days after~~ shall, within ten (10) days following receipt of payment from the Owner, ~~the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.~~pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the

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performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. 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.
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§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, 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. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 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.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.
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§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's

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compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

...

§ 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.~~

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

...

§ 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 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 as provided under ~~Section 9.8.2.~~ 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.

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§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly 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.

...

§ 9.10.1 ~~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~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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~~

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~~Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 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~~ The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other ~~indebtedness~~ liabilities connected with the Work for which the Owner or the Owner's property might be responsible ~~or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may~~ have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall 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.~~discharge any such lien or indemnify the Owner from liability.

§ 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 without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it~~ The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of ~~Claims.~~any claims by the Owner.

§ 9.10.4 ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~

~~**.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

~~**.2** failure of the Work to comply with the requirements of the Contract Documents;~~

~~**.3** terms of special warranties required by the Contract Documents; or~~

~~**.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~Intentionally deleted.

...

§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

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§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

~~**§ 10.1 Safety Precautions and Programs**~~

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

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

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

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

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

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

...

§ 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. .

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18. CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE ALL PARTIES.

§ 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.~~ maintaining a safe and healthy work site. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
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~~§ 10.2.8 Injury or Damage to Person or Property~~
~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

§ 10.2.8 Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

...

§ 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

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

§ 10.3.4 The Owner shall not be responsible under this ~~Section 10.3~~ Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a 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,~~ Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

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~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~**§ 10.4.1** 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.

...

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

§ 11.1.4 ~~**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.~~Intentionally deleted.

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...

§ 11.2.1 ~~The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.~~ Intentionally deleted.

§ 11.2.2 ~~Failure to Purchase Required Property Insurance.~~ ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~ Intentionally deleted.

§ 11.2.3 ~~Notice of Cancellation or Expiration of Owner's Required Property Insurance.~~ ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~ Intentionally deleted.

...

§ 11.3.1 ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (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 they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 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.~~ Intentionally deleted.

~~§ 11.3.2~~ ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.3.2 Intentionally deleted.

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~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~Intentionally deleted.

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§ 11.5.1 ~~A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~Intentionally deleted.

§ 11.5.2 ~~Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~Intentionally deleted.

...

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

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

§ 12.1.2 If a portion of the Work has been covered 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~~ may 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~~ Guaranteed Maximum Price 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.

...

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

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

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...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion ~~thereof or after the date for commencement of warranties established under Section 9.9.1, or~~ thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

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§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

§ 12.2.5 Nothing contained in this ~~Section 12.2~~ 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~~ Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems

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just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

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The ~~Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

...

§ 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,~~ 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.

...

~~**§ 13.4.1 § 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.~~**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written 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~~ Owner shall provide or contract 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.~~ approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from~~

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~~time to time at the place where the Project is located.~~in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 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.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

...

§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees,~~ Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

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.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~~ the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract ~~Documents; or~~Documents.

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.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Intentionally deleted.

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ 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,~~ Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is ~~less.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in ~~Section 14.1.1~~ Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an 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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in ~~Section 14.1.3.~~Section 14.1.3.

...

.2 fails to make payment to Subcontractors ~~or suppliers~~ for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

~~**.4**~~ **.6** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

.2 Accept assignment of subcontracts pursuant to ~~Section 5.4;~~ Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

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

§ 14.3.2 The Contract Sum and Contract Time ~~shall be adjusted for~~ may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1.~~ delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the ~~extent~~extent:

.1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted,~~ was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause.~~cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor ~~shall~~shall:

...

.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.~~orders related to the Project.

§ 14.4.3 In case of ~~such~~ termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

...

~~§ 15.1.2 Time Limits on Claims~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such ~~Claim or within 21 days after the claimant first recognizes the~~

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~~condition giving rise to the Claim, whichever is later.~~Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the ~~Initial Decision Maker~~ Architect is required.
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§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7~~ Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the ~~Initial Decision Maker's~~ Owner's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15. ~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price
If the Contractor wishes to make a Claim for additional cost or an increase in the ~~Contract Sum,~~ Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.
.

...

§ 15.1.6.2 ~~If adverse~~ The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a ~~Claim~~ claim for additional time, such Claim shall be documented by data substantiating ~~that weather conditions were abnormal for the period of time,~~ such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

...

§ 15.2.1 ~~Claims, 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 Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been~~

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~~rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the Claim take one or more of the following actions: (1) request additional supporting data from the ~~claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect 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 Owner's expense.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

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

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~Intentionally deleted. .

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~**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.

...

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§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

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§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

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§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

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

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the

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District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**AMERICAN CONSTRUCTORS**
By:	**By:**
Signature	**Signature**
Pam Sanchez, Acting Superintendent	Joe Charlton, COO
Date:	Date:

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

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§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

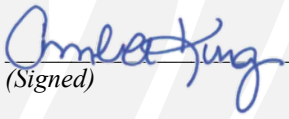
§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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Certification of Document's Authenticity

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I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:13:35 ET on 02/12/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/12/2025

(Dated)

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Construction Agreements between Lake Travis ISD and Braun & Butler Construction for Lake Travis High School Science Wing Addition Project

RECOMMENDED ACTION
Approve the construction agreements between Lake Travis ISD and Braun & Butler Construction for the Lake Travis High School science wing addition project and authorize the Acting Superintendent or designee to execute the agreements.

RATIONALE
In December 2023, the Board approved Braun & Butler Construction as General Contractor for the construction of the new science wing addition at Lake Travis High School. The administration is seeking approval to execute the agreements with Braun & Butler Construction.

BUDGET PROVISIONS
2023 Bond Program

RESOURCE PERSONNEL
Pam Sanchez – Acting Superintendent/Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Chad Crowson – General Counsel

ATTACHMENTS
Braun & Butler A133-2019
Braun & Butler A201-2017

MEETING DATE
February 19, 2025

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 day of in the year 2025
(In words, indicate day, month, and year.)

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

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

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

Braun & Buttler Construction
300 Hazelwood St.
Leander, TX 78641
512-837-2882

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

Science Wing Addition (CMR Bid #24-007)

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

Haddon Cowan Architects
2301 E. Riverside Dr., Bldg A., Suite 80
Austin, TX 78741
512-228-4389

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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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Request for Proposal Bid #24-007; see also Exhibit A, GMP Amendment

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

The project consists of a new two-story classroom addition to the existing Lake Travis High School on the Northwest side of the school along Spillman Loop. The additional will be approximately 29K sf and include 4 1st floor Science classroom/labs, approximately 6 general or CTE 2nd floor classrooms, and support storage, offices, and restroom spaces. This addition will connect directly to the existing building and will utilize new HVAC systems, electrical and gas connections. All existing utilities along Spillman Loop that are located within the proposed addition building footprint are

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to be relocated/rerouted accordingly. Required accessible routes and entries serving the new addition are to be developed as part of the project.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

Approximate Construction Budget – $16,46,376

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

.1 Design phase milestone dates, if any: See Exhibit A, GMP Amendment

.2 Construction commencement date: See Exhibit A, GMP Amendment

.3 Substantial Completion date or dates: See Exhibit A, GMP Amendment

.4 Other milestone dates: See Exhibit A, GMP Amendment

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

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

(Paragraph deleted)
§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Request for Proposal Bid #24-007; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

§ 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.)
Architect

§ 1.1.10 The Architect shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

Structural Engineer	Picket, Kelm & Associates
Mechanical Engineer	MEP Engineering
Electrical Engineer	MEP Engineering

(Paragraphs deleted)

Civil Engineer	Malone/Wheeler

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Landscape Architect	Blu Fish Collaborative, Inc.
IT/AV/Security	Vickers Technology Consulting
Roofing/Waterproofing	Hollon+Cannon Group, LLC
FFE	EMID

(Paragraphs deleted)
The Owner shall retain the following consultants and contractors:

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

Michael Cown
Haddon-Cowan Architects
2301 E Riverside Dr., Bldg A, Suite 80
Austin, TX 78741
Telephone: 512-228-4389
mcowan@haddoncowan.com

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

Kyle Pearson
300 Hazelwood St., Suite 100
Leander, TX 78641
512-837-2882
512-497-1224
kpearson@braun-butler.com

§ 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.)

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

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

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

See Request for Proposal Bid #24-007; see also Exhibit A, GMP Amendment

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal

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signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: LTISD Superintendent.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

(Paragraphs deleted)

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

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

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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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 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, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. 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.

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§ 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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 suggest 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 inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 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.

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§ 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 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval, which may consist of a verification that all specified requirements will be met.

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

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

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: 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 other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

- **.1** The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;
- **.2** The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- **.3** A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- **.4** The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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

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§ 3.1.11.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, 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 this Agreement.

§ 3.1.11.9 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, according to Section 7.8.2.

§ 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 on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall 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. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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.

§ 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;

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.2 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; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;

.5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work . Such reasons include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's monthly review and approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. 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. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

(Paragraphs deleted)

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration

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

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

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

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

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

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

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

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§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

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

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, 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, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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

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

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

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

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

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

(Paragraph deleted)
§ 4.1.2 Intentionally deleted.

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§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

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

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

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

§ 4.2 Owner's Designated Representative

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
LTISD Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

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

§ 4.3 Architect

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

§ 4.4 Inspection and Testing

Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide

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or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

(Paragraph deleted)

Lump Sum of Thirty-Five Thousand ($35,000).

§ 5.1.2

(Paragraphs deleted)

Intentionally deleted.

(Table deleted)

§ 5.1.2.1 Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 9 months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

(Paragraphs deleted)

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable

(Paragraphs deleted)

within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 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.)

3.8 %

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

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

Only by agreement of Owner's Board of Trustees.

§ 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 A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

(Paragraphs deleted)

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between

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Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

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

N/A

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

§ 6.3 Changes in the Work
§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA

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Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 Intentionally deleted.

(Paragraphs deleted)

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

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior 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 the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. 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 written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 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.

(Paragraph deleted)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

(Paragraphs deleted)

§ 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 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 attributable to and required for the Work and only as approved by Owner.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories,

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workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

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

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

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

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

§ 7.5.1 Costs of transportation, 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 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 Intentionally deleted.

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

§ 7.5.4 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

(Paragraphs deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

§ 7.6.5.1 Intentionally deleted.

(Paragraphs 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 Costs of document reproductions and delivery charges

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

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, that are directly attributable to and required for the Work and are approved by the Owner.

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

§ 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 specific 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.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction,

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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 or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Intentionally deleted;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for services incurred during the Preconstruction Phase;
- **.10** Delay damages or claims; and
- **.11** Construction Manager's Fee in Section 6.1.2

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner.. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

(Paragraph deleted)

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the

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difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 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.

(Paragraphs deleted)

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

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

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

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

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

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

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

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

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

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

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§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various

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portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect, and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) classification on the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- **.1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;
- **.2** That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- **.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- **.4** The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- **.1** The aggregate of any amounts previously paid by the Owner;
- **.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- **.3** Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- **.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- **.5** The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation;
- **.6** Retainage withheld pursuant to Section 11.1.8.
- **.7** Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the

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retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

.2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§ **11.1.7.4** In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

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§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.2 Final Payment
§ 11.2.1 Final payment, for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

- **.1** the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- **.3** a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable;
- **.4** The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and
- **.5** Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

(Paragraphs deleted)
§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the

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Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

.6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

.9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

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Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

§ 12.1.2 Intentionally deleted.

§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[ ] Intentionally deleted.

[**X**] Litigation in a court of competent jurisdiction

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction with proper venue being the county where the Project site is located.

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 less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in 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 less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 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 Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. 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.

(Paragraphs deleted)
§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;
.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

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N/A

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price, if established, and Contract Time may be increased as provided in Article 14 of AIA Document A201–2017, 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. 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.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1 The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1. The Owner shall be named as an additional insured on the policy as to the Project.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, independent contractors, explosion, fire, collapse and underground, product liability, and $2,000,000 in the aggregate for completed operations. Personal & Advertising Injury limit of $1,000,000.

.1 Without limiting the foregoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

(Paragraphs deleted)

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

(Paragraph deleted)
§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

(Paragraph deleted)
§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

(Paragraph deleted)
§ 14.3.2.5.1.4 Services include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ 14.3.1.5.1.5 The Construction Manager shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the Construction Manager providing services on the Project for the duration of the Project.

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

(Paragraph deleted)
§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

.1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have, on file, certificates of coverage showing coverage for all persons providing services on the Project; and

.2 No later than seven days after receipt by the Construction Manager, 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.

(Paragraph deleted)
§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

(Paragraphs deleted)
§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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§ 14.3.1.5.1.11 The Construction Manager shall post on each Project site a notice, in the text form and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the stator requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project:

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

.1 A certificate of coverage, prior to the other person beginning work on the Project; and

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 Notify the Owner in writing by certified mail or persona 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 items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

§ 14.3.1.5.1.13 By signing this Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that 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.

§ 14.3.1.5.1.15 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued or delivery, or renewed on or after January 1, 1996.

§ 14.3.1.6 Intentionally deleted.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, plus value of subsequent Contract modifications and cost of materials

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supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Intentionally deleted.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

(Paragraphs deleted)
(Table deleted)

§ 14.5 Other provisions:

§ 14.5.1 Criminal History Checks

Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 14.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct

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contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 14.5.6 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.7 Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

§ 14.5.9 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 14.5.10 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

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§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

§ 14.5.16 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 14.5.22 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the

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District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Owner and Construction Manager. If any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended

.2 Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A201™–2017, General Conditions of the Contract for

(Paragraphs deleted)

Construction, as amended

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(Paragraph deleted)

.4 Exhibit B – Prevailing Wage Rate

(Paragraphs deleted)

This Agreement is entered into as of the day and year first written above.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**BRAUN & BUTLER**
OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
Pam Sanchez, Acting Superintendent *(Printed name and title)*	*(Printed name and title)*

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Additions and Deletions Report for

AIA® Document A133® – 2019

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PAGE 1

AGREEMENT made as of the day of in the year 2025

...

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

Braun & Buttler Construction
300 Hazelwood St.
Leander, TX 78641
512-837-2882

...

Science Wing Addition (CMR Bid #24-007)

...

Haddon Cowan Architects
2301 E. Riverside Dr., Bldg A., Suite 80
Austin, TX 78741
512-228-4389

PAGE 2

EXHIBIT B ~~INSURANCE AND BONDS~~**PREVAILING WAGE RATES**

...

See Request for Proposal Bid #24-007; see also Exhibit A, GMP Amendment

...

The project consists of a new two-story classroom addition to the existing Lake Travis High School on the Northwest side of the school along Spillman Loop. The additional will be approximately 29K sf and include 4 1st floor Science classroom/labs, approximately 6 general or CTE 2nd floor classrooms, and support storage, offices, and restroom spaces. This addition will connect directly to the existing building and will utilize new HVAC systems, electrical and gas connections. All existing utilities along Spillman Loop that are located within the proposed addition building

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footprint are to be relocated/rerouted accordingly. Required accessible routes and entries serving the new addition are to be developed as part of the project.

PAGE 3

~~(Provide total and, if known, a line item breakdown.)~~
Approximate Construction Budget – $16,46,376

...

.1 Design phase milestone dates, if any: See Exhibit A, GMP Amendment

.2 Construction commencement date: See Exhibit A, GMP Amendment

.3 Substantial Completion date or dates: See Exhibit A, GMP Amendment

.4 Other milestone dates: See Exhibit A, GMP Amendment

...

N/A

§ 1.1.6.1 ~~If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

...

See Request for Proposal Bid #24-007; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following ~~representative~~ representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

...

Architect

§ 1.1.10 The ~~Owner~~ Architect shall retain the following consultants and contractors:

...

~~**.1 Geotechnical Engineer:**~~Structural Engineer Picket, Kelm & Associates
Mechanical Engineer MEP Engineering

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Electrical Engineer MEP Engineering

~~.2 Civil Engineer:~~Civil Engineer Malone/Wheeler
Landscape Architect Blu Fish Collaborative, Inc.
IT/AV/Security Vickers Technology Consulting
Roofing/Waterproofing Hollon+Cannon Group, LLC
FFE EMID

~~.3 Other, if any:~~
~~*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*~~

The Owner shall retain the following consultants and contractors:
PAGE 4

Michael Cown
Haddon-Cowan Architects
2301 E Riverside Dr., Bldg A, Suite 80
Austin, TX 78741
Telephone: 512-228-4389
mcowan@haddoncowan.com

...

Kyle Pearson
300 Hazelwood St., Suite 100
Leander, TX 78641
512-837-2882
512-497-1224
kpearson@braun-butler.com

...

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

...

See Request for Proposal Bid #24-007; see also Exhibit A, GMP Amendment

...

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, ~~and~~ Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price ~~Amendment~~ Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this

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Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

§ 2.1.1 Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: LTISD Superintendent.
PAGE 5

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~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, ~~shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law.~~ as amended, shall apply only as applicable. The term "Contractor" as used in A201–2017 shall 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. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.~~

~~**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**~~

~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

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§ 2.3.2 Per Texas Government Code, §2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with the terms herein.

§ 2.3.3 For the Construction Phase, the general conditions of the contract shall be set forth in A201-2017, as amended by the parties, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 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, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

PAGE 6

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity ~~discovered by~~ discovered by, that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

§ 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;~~ construction, which shall satisfy Owner's time requirements; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written~~ building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, ~~reliance, and exchange of digital data, including building information models for the Project.~~and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or

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architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. 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.

PAGE 7

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~~ Architect 's services, other Owner consultants' services, and the ~~Owner's~~ 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; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

...

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, 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~~ suggest 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 inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective ~~action.~~action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

§ 3.1.6.3 If the Architect is providing cost estimating ~~services as a Supplemental Service,~~ 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.

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§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and ~~approval.~~approval, which may consist of a verification that all specified requirements will be met.

§ 3.1.11.2 The Construction Manager shall develop ~~bidders' interest in the Project.~~bidders ' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

...

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: 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 other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.1.11.6 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.1.11.7 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 3.1.11.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive

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the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in this Agreement.

§ 3.1.11.9 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, according to Section 7.8.2.

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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.~~Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 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.~~

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~~**.2** A~~ **.2** 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; to supplement the information provided by the Owner and contained in the Drawings and Specifications;

~~**.3** A~~ **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~

.5 ~~A date by which the Owner must accept the Guaranteed Maximum Price.~~The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and

.6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work . Such reasons include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's monthly review and approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which

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exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 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. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 ~~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.~~ The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. 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. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price ~~all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.~~any taxes from which Owner is exempt.

§ 3.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

...

§ 3.3.1.1 ~~For purposes of Section 8.1.2 of A201–2017, the~~ The date of commencement of the Work shall mean the date of commencement of the Construction ~~Phase.~~
Phase, as provided in Section 8.1.2 of A201-2017.

~~**§ 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.~~

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~~**§ 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.~~

~~**§ 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.~~

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration
§ 3.3.2.1 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection, subject to the provisions of the Public Information Act. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 3.3.2.1.1 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

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.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report
The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, 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, including changes to the Work approved by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

§ 3.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner.

.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 3.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

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§ 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,

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including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems,~~ 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 reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these ~~costs.~~ costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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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. 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~~ Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law ~~and~~ or as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys ~~describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~ as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

§ 4.1.4.3 ~~The Owner, when such services are requested,~~ Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work, and are requested by the Architect or Construction Manager and approved by the Owner, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner ~~shall~~ may also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's reasonable written request for such information or services.

...

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~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
LTISD Superintendent and Robert Winovitch, Director of Construction and Facilities, or successor.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager shall furnish all legal, insurance, and accounting services that Construction Manager may determine to be necessary to meet Construction Manager's needs and interests.

...

The ~~Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The~~ Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.

§ 4.4 Inspection and Testing
Owner shall provide the Construction Manager ~~with~~ a copy of the ~~scope of services in the executed~~ executed agreement between the Owner and the Architect, and any further modifications to ~~the Architect's scope of services in the agreement.~~the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.
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~~*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*~~

Lump Sum of Thirty-Five Thousand ($35,000).

§ 5.1.2 ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.~~
~~*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*~~

Intentionally deleted.

~~Individual or Position~~	~~Rate~~

§ 5.1.2.1 ~~Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.~~Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~( )~~ 9 months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.
~~§ 5.2 Payments~~
~~§ 5.2.1~~ ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.~~

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§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~
~~*(Insert rate of monthly or annual interest agreed upon.)*~~

~~ %~~ within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025.

...

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's ~~Fee.~~Fee, the total of which shall not exceed the Guaranteed Maximum Price. All savings under the Guaranteed Maximum Price shall accrue to Owner.

...

3.8 %

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

...

Only by agreement of Owner's Board of Trustees.

...

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

~~**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of 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.)*~~

~~**§ 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 paid by the Construction Manager without reimbursement by the Owner.~~

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~~§ 6.3 Changes in the Work~~

~~§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to $1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of $500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 6.1.6 Other:

(*Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.*)

N/A

§ 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(s), subject to additions and deductions by Change Order as provided in the Contract Documents and the Dates of Substantial Completion and Final Completion shall be subject to

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adjustment as provided in the Contraction Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 ~~The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.~~Intentionally deleted.

~~**§ 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.~~

~~**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~

~~**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.~~

~~**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

~~**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 costs necessarily incurred by the Construction Manager in the proper performance of the Work. 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.~~

§ 6.3.2 Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended by the parties.

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent

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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 the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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 direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. 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 written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

~~**§ 7.2 Labor Costs**~~

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior ~~approval, at off-site workshops.~~written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

~~**§ 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 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.)*~~

~~**§ 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 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** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.~~

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the

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site and performing Work, with the Owner's prior 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 attributable to and required for the Work and only as approved by Owner.

§ 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 for that portion of their time directly attributable to and required for the Work and as approved by Owner.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment-related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and~~ subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.
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§ 7.4.1 Costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

...

§ 7.5.2 ~~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 approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.~~Intentionally deleted.

...

§ 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.

...

~~**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.~~

~~**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

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~~**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

~~**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.~~

~~**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

~~**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.~~

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority for materials that are related to the Work but not incorporated into the Work, and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents and paid for by the Construction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017, as amended, or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

~~**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~Intentionally 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** Costs of document reproductions and delivery charges.~~

~~**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

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~~**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.~~

~~**§ 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.~~

§ 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 Costs of document reproductions and delivery charges

§ 7.6.8 Deposits for lost for causes directly resulting from the Owner's wrongful actions or decisions.

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7.1 Other costs incurred in the performance of the Work, ~~with the Owner's prior approval.~~that are directly attributable to and required for the Work and are approved by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document ~~A201–2017.~~A201–2017, as amended.
PAGE 18

Manager to pay such costs, unless such costs are excluded by the provisions of Section ~~7.9.~~7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

...

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the ~~Owner~~ Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.
PAGE 19

.2 ~~Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~Intentionally deleted;

...

.6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ 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;

...

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.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~

.9 Costs for services incurred during the Preconstruction ~~Phase.~~Phase;

.10 Delay damages or claims; and

.11 Construction Manager's Fee in Section 6.1.2

...

§ 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.~~ Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner.. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

~~**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.~~

§ 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.

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§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this ~~Agreement,~~ 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~~ 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.

~~**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.~~

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain bids or proposals from Subcontractors for the performance of all major elements of the Work. All bids or proposals shall be sent directly to Construction Manager.

§ 9.4 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

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.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

.5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

> "By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, the Construction Manager, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

§ 9.5 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.

§ 9.6 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, architect, engineer, or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

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§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the __ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the __ day of the __ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than __ (__) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. The Construction Manager shall promptly pay all bills validly due and owing for labor and material performed and furnished by others in connection with the performance and construction of the Work.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values~~ values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

§ 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 may require. The schedule of values shall be~~ Architect, and Program Manager, if applicable, may require. The format and tracking method of the original schedule of values and of all updates to the schedule of values shall be subject to the approval of the Architect and Program Manager, if applicable. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If at any time, the amount shown on the schedule of values exceeds the Guaranteed Maximum Price allocable to that portion or classification of the Work, then the amount payable to Construction Manager by Owner shall be reduced by the amount of such excess.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the 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~~

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~~the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in~~ classification on the schedule of values.

...

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

...

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditors~~ auditors, accountants, or other representatives in such documentation; ~~and~~

.6 Retainage withheld pursuant to Section 11.1.8.

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.

.2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.4 Subtract withheld payments pursuant to Section 11.1.3.

§ **11.1.7.3** Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

.1 The location must be agreed to, in writing, by the Owner and Surety;

.2 The location must be a bonded warehouse;

.3 The Surety must agree, in writing, to each request for payment; and

.4 The Construction Manager must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§ **11.1.7.4** In the event of Contract termination or default by the Construction Manager, the items stored off the site, upon which payment has been made, will be promptly turned over to the Owner or Owner's designated representative at a location near the Project site as directed by the Owner or Owner's designated representative. The full provisions of Performance and Payment Bonds on this Project cover the materials stored off the site in every respect as though they were stored on the Project site.

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§ 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.)~~due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

...

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be subject to written consent of the Construction Manager's Surety, and as follows:

...

N/A
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N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the ~~Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201–2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to ~~Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.~~Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In ~~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's auditors acting in the sole interest of the Owner.~~submitting Construction Manager's Applications for Payment Construction Manager shall be responsible for all errors or omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

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...

§ 11.2.1 Final payment, ~~constituting the entire unpaid balance of the Contract Sum,~~ for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the ~~Contract, except for~~ Contract including the Construction Manager's responsibility to correct ~~Work as provided in Article 12 of AIA Document A201–2017,~~ Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; and~~Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;

.3 a final Certificate for Payment has been issued by the Architect ~~in accordance with Section 11.2.2.2.~~and approved by the Program Manager, if applicable;

.4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and

.5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within ~~30~~ 60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

~~**§ 11.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.~~

~~**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.~~

~~**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 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 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.~~

~~**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

~~**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~§ 11.3 Interest~~

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~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*~~

~~—%~~

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' or other representatives' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the
Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article
9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

§ 11.2.3.1 The amount of the final payment shall be calculated as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

.6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

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.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

.9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, that are not excluded by Section 7.9, to correct defective or nonconforming Work that is not the fault of the Construction Manager or arising from the resolution of a dispute, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or
in the absence thereof, at the maximum rate permitted by law, in accordance with Texas Government Code Chapter 2251.

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§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute ~~resolution, and Section 12.1.2 of this Agreement shall not apply.~~resolution.

§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 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.~~Intentionally deleted.
~~(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~
§ 12.1.3 When Owner has an applicable claim for construction defects, Owner shall comply with the provision of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Construction Manager's or Architect's opportunity to cure.

...

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:

...

[ ] ~~Arbitration pursuant to Article 15 of AIA Document A201–2017~~Intentionally deleted.

[**X**] 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.~~jurisdiction with proper venue being the county where the Project site is located.

...

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§ 13.1

~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 ~~If~~ .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 less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction ~~Manager's~~ Manager 's compensation under this Section exceed the compensation set forth in ~~Section 5.1.~~Section 5.1.

...

forth in ~~Section 5.1.~~Section 5.1.

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§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse ~~or indemnify~~ the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. 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.

...

~~**§ 13.2.2 Termination by the Owner for Cause**~~

~~**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;~~

~~**.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~

~~**.3** Subtract the aggregate of previous payments made by the Owner; and~~

~~**.4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.~~

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed 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;

.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' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

...

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~~(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)~~
N/A
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The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum ~~Price~~ Price, if established, and Contract Time ~~shall~~ may be increased as provided in Article 14 of AIA Document A201–2017, 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.

...

§ 14.1 ~~Terms~~ Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017. 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.

...

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, 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~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

~~**§ 14.2.2** 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.~~This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 Intentionally deleted.

§ 14.3 ~~Insurance and Bonds~~Insurance and Bonds

§ 14.3.1 The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1. The Owner shall be named as an additional insured on the policy as to the Project.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than $1,000,000 for each occurrence and $2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, independent contractors, explosion, fire, collapse and underground, product liability, and $2,000,000 in the aggregate for completed operations. Personal & Advertising Injury limit of $1,000,000.

.1 Without limiting the foregoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

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§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than $1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

~~**§ 14.3.1 Preconstruction Phase**~~

~~The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.~~

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of $10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

~~**§ 14.3.1.1** Commercial General Liability with policy limits of not less than ($) for each occurrence and ($) in the aggregate for bodily injury and property damage.~~

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than $1,000,000 each accident, occurrence or disease.

~~**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ($) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Contraction Manager's employees providing services on a Project is required for the duration of the Project.

§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

~~**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

§ 14.3.2.5.1.4 Services include, without limitation, providing, hauling or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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§ 14.3.1.5.1.5 The Construction Manager shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all employees of the Construction Manager providing services on the Project for the duration of the Project.

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

~~**§ 14.3.1.4** Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ($) each accident, ($) each employee, and ($) policy limit.~~

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

.1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have, on file, certificates of coverage showing coverage for all persons providing services on the Project; and

.2 No later than seven days after receipt by the Construction Manager, 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.

~~**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ($) per claim and ($) in the aggregate.~~

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

~~**§ 14.3.1.6 Other Insurance**~~
~~*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*~~
§ 14.3.1.5.1.10 The Construction Manager shall notify the Owner, in writing by certified mail or personal delivery, within ten (10) days after Construction Manager knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

§ 14.3.1.5.1.11 The Construction Manager shall post on each Project site a notice, in the text form and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the stator requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project:

.2 Provide to the Construction Manager, 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 Construction Manager, 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 who it contracts, and provide to the Construction Manager:

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.1 A certificate of coverage, prior to the other person beginning work on the Project; and

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.6 Notify the Owner in writing by certified mail or persona 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 items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

§ 14.3.1.5.1.13 By signing this Contract or providing or causing to be provided a certificate of coverage, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ 14.3.1.5.1.14 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Construction Manager that 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.

§ 14.3.1.5.1.15 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued or delivery, or renewed on or after January 1, 1996.

§ 14.3.1.6 Intentionally deleted.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, 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. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

.1 builder's risk: $25,000;
.2 flood: $25,000; or
.3 named windstorm: $100,000.

§ 14.3.1.8 Intentionally deleted.

§ 14.3.1.9 Coverage for debris removal, with limits not less than $1,000,000.

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§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than $1,000,000 per claim and $1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

~~**Coverage** **Limits**~~

~~**§ 14.3.1.7 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.~~

~~**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.~~

~~**§ 14.3.2 Construction Phase**~~
~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in 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, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.~~

~~**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:~~
~~*(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*~~

§ 14.5.1 Criminal History Checks
Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

§ 14.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's

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Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 14.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history' means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 14.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 14.5.6 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to a lender providing financing for be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.7 Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

§ 14.5.9 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 14.5.10 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement. Governing law and venue shall be as specified in AIA Document A201-2017 Section 13.1.

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 14.5.13 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 14.5.14 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

§ 14.5.16 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 14.5.22 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration

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surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

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§ 15.1 This ~~Agreement~~ Contract represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This ~~Agreement~~ Contract may be amended only by written instrument signed by both Owner and Construction Manager. If

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any portion of this Contract is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Contract shall remain in full force and effect.

§ 15.2 The following documents ~~comprise the Agreement:~~are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended

.2 ~~AIA Document A133™–2019,~~ Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document ~~A133™–2019, Exhibit B, Insurance and Bonds~~

.4 ~~AIA Document~~ A201™–2017, General Conditions of the Contract for ~~Construction~~

.5 ~~Building Information Modeling Exhibit, if completed:~~

.6 ~~Other Exhibits:~~
~~*(Check all boxes that apply.)*~~

~~[ ]~~ ~~AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~Construction, as amended
~~*(Insert the date of the E234-2019 incorporated into this Agreement.)*~~

.4 Exhibit B – Prevailing Wage Rate

~~[ ]~~ ~~Supplementary and other Conditions of the Contract:~~

~~Document~~	~~Title~~	~~Date~~	~~Pages~~

.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.)*~~

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT **BRAUN & BUTLER**
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Pam Sanchez, Acting Superintendent

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AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:02:24 ET on 02/13/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/13/2025

(Dated)

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AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Science Wing Addition (CMR Bid #24-007)

THE OWNER:
(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

THE ARCHITECT:
(Name, legal status and address)

Haddon Cowan Architects
2301 E. Riverside Dr., Bldg A., Suite 80
Austin, TX 78741
512-228-4389

THE CONTRACTOR:

Braun & Buttler Construction
300 Hazelwood St.
Leander, TX 78641
512-837-2882

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1 GENERAL PROVISIONS

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3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

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12 UNCOVERING AND CORRECTION OF WORK

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18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written 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.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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§ 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 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.

(Paragraphs deleted)
§ 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 on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ **1.1.9** The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor
All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

1.1.10 Miscellaneous Other Words
1.1.10.1 Business Day
The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

1.1.10.2 Calendar Day
A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Holidays
Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day
Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 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.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- **.1** Contract Modifications signed by Contractor and Owner.
- **.2** Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- **.3** Agreement – AIA Document A133-2019, as modified by the Owner for the Project
- **.4** General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- **.5** Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. 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 any reserved rights

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the 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.

§ 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

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed $100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

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§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Intentionally deleted.

§ 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.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's

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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. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent 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 Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. 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, or for price escalations in the marketplace. 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 either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- **.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 Architect or the Owner.
- **.2** The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

§ 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 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 submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as

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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.

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 , any damage done to lines, cables, pipes, and pipelines identified to Contractor. The Contractor may file a Claim pursuant to Article 15 for costs resulting from the repairs.

3.2.6 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. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

§ 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 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review contractor 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 Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. Contractor acknowledges that its operations and the performance of the Work shall not unnecessarily or substantially interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities to the extent feasible given the nature of the Project. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor, in collaboration with Owner, shall exercise reasonable skill and judgment to ensure that continuing construction activity will not unnecessarily or substantially interfere with the use and occupancy of facilities in use on the site to the extent practicable given the nature of the Project. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor and Owner. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

3.3.9 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent

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and whether or not incorporated or to be incorporated in the Work. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES
The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 3.4.2 Intentionally deleted.

§ 3.4.2.1 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 substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 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 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 confirms 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 in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

3.4.2.3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a

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public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.

§ 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, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

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§ 3.5.3 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 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 from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected, not to exceed three (3) months.

§ 3.5.8 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

§ 3.6 Taxes

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 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

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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.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 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. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

§ 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 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. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 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, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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.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 within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

.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 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 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, which shall not unreasonably be withheld or delayed. .

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which

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have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

.4 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the 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.

§ 3.10.2 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 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 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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§ 3.10.5 If reasonably required by Owner, Contractor shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the 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 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.

§ **3.11.1** Contractor shall make available, at theContractor's office, 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.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect 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.

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§ 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.

§ 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 approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect 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 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 not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 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. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. 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.

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§ 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. 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 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than two times 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, 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 may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 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

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 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 WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT

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IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

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.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 ANTITRUST VIOLATION

§ 3.21.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Intentionally deleted.

§ 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 Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 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, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the 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. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct

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communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the 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.

§ 4.2.6 The Architect or the Owner 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 or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to 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. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 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.

§ 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 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 decisions 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.

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§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 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 at no additional expense to the Owner.

4.2.15 The Architect may appoint an employee or other person to assist the Architect 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 from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same

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. 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.

§ 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. 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.

§ 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.

§ 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, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly 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.

§ 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.

§ 5.3 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

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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.

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

(Paragraphs deleted)

§ 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; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may, in the Owner's sole discretion, be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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. Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by 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, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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§ 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.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 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 the Architect 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 by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

- **.1** For the Contractor, for Work performed by the Contractor's own forces, ten percent (10 of the cost (0% for change orders to be paid out of any contingency allowance).
- **.2** For the Contractor, for the Work performed by the Contractor's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).
- **.3** For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
- **.4** The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

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.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, to the Contract Sum; and
.3 The extent of adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and 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 determine 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 Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and 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, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

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§ 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 and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may 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 shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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 shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 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. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are 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.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.7 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Agreement does not permit recovery of damages for delay by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 9 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

§ 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 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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§ 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.

§ 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 and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect or the Owner 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 or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including, but not limited to, loss resulting from acts and omissions described in Section 3.3.2, because of:

- **.1** Defective Work not remedied;
- **.2** Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- **.3** Failure of the Contractor to make payments properly to Subcontractors 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** Repeated failure to carry out the Work in accordance with the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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§ 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.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. 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. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. 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 Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

§ 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

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the

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Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 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; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

§ 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 responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

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§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

§ 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 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 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.

§ 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 expressly 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 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner or the Owner's property might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

§ 9.10.4

(Paragraphs deleted)

Intentionally deleted.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The 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 the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, 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.

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§ 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER'S CONSULTANT'S, OR ARCHITECT'S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER'S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 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.

(Paragraphs deleted)

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 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.

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§ 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, 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 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a 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 deleted.

§ 10.4 Emergencies

§ 10.4.1 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

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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§ 11.1.3 Intentionally deleted.

§ 11.1.4 Intentionally deleted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally deleted.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Intentionally deleted.

(Paragraph deleted)

§ 11.3.2 Intentionally deleted.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Intentionally deleted.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

(Paragraph deleted)

§ 12.1. 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 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 may 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 Guaranteed Maximum Price 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 failing Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

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§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

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§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 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 § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written notice of when and where tests and

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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 Owner shall provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

§ 13.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 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.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least ten year (10) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

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13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or

.3 Because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents.

.4 Intentionally deleted.

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an 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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces,

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in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

.6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, 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 days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written 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 related to the Project.

§ 14.4.3 In case of termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

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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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor and Owner, must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the other party Architect and the Owner.

§ 15.1.3.2 Claims by Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Architect is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 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 the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

(Paragraphs deleted)

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§ 15.1.7 Calculating Claims for Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor or Owner, the following standards will apply:

.1 No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of 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 Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Intentionally deleted. .

§ 15.2.6.1 Intentionally deleted.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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§ 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 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.
§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.
§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

§ 15.4 Arbitration
§ 15.4.1 The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. By entering into this Agreement,

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Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

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.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**BRAUN & BUTLER**
By:	**By:**
Signature	**Signature**
Pam Sanchez, Acting Superintendent	
(Printed name and title)	*(Printed name and title)*
Date:	Date:

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Additions and Deletions Report for

AIA® Document A201® – 2017

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PAGE 1

Science Wing Addition (CMR Bid #24-007)

...

(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

...

(Name, legal status and address)

Haddon Cowan Architects
2301 E. Riverside Dr., Bldg A., Suite 80
Austin, TX 78741
512-228-4389

...

THE CONTRACTOR:

Braun & Buttler Construction
300 Hazelwood St.
Leander, TX 78641
512-837-2882

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16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions),

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all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. ~~The Contract may~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

...

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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~~§ 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.~~

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§ 1.1.7 Instruments of Service

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...

§ **1.1.9** The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor

All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

1.1.10 Miscellaneous Other Words

1.1.10.1 Business Day

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

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§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

...

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

.1 Contract Modifications signed by Contractor and Owner.

.2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.

.3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project

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.4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
.5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings
Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

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§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants' reserved rights.~~any reserved rights

...

The parties shall agree upon ~~written~~ protocols governing the transmission and use ~~of, and reliance on,~~ of Instruments of Service or any other information or documentation in digital form.

~~**§ 1.8 Building Information Models Use and Reliance**~~
~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.8 Building Information Models Use and Reliance
Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

§ 2.1.1 The Owner is the ~~person or entity identified as such in the Agreement~~ Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The ~~Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1,~~ Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power

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to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed $100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~
Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner ~~shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

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§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract 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. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~Intentionally deleted.

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~Intentionally deleted.

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~Intentionally deleted.

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§ 2.3.5 ~~The Owner shall furnish information~~ 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.~~shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 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.~~The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

...

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may 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, except to the extent required by Section 6.1.3.~~**§ 2.4.1** If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

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~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~**§ 2.5.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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§ 3.1.2 The Contractor shall perform the Work in ~~accordance with the Contract Documents.~~a good and workmanlike manner except to the extent 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 Owner or Owner's consultants, if applicable, conducted in accordance

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with the Contract Documents or 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.

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§ 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. 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, or for price escalations in the marketplace. 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 either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4,~~ 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 and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

.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 Architect or the Owner.

.2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

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§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of ~~Sections 3.2.2~~ Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. 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.

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 , any damage done to lines, cables, pipes, and pipelines identified to Contractor. The Contractor may file a Claim pursuant to Article 15 for costs resulting from the repairs.

3.2.6 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. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

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3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

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3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

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§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review contractor 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 Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. Contractor acknowledges that its operations and the performance of the Work shall not unnecessarily or substantially interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities to the extent feasible given the nature of the Project. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor, in collaboration with Owner, shall exercise reasonable skill and judgment to ensure that continuing construction activity will not unnecessarily or substantially interfere with the use and occupancy of facilities in use on the site to the extent practicable given the nature of the Project. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor and Owner. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

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3.3.9 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4.1 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. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 ($60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at https://www.wdol.gov/ or https://beta.sam.gov/) effective as of the date of this Agreement.

§ 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.~~Intentionally deleted.

§ 3.4.2.1 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

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(iii) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 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 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 confirms 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 in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

3.4.2.3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

3.4.5.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22.0834 or cause such information to be provided to Owner, the Texas Department of Public Safety ("DPS") or such entity as is designated by Owner for any employees required by statute to submit to a fingerprint-based background check through the DPS FACT Clearinghouse of Texas. Contractor will cooperate with Owner to determine which Contractor employees, if any, are required to submit to such background check. Before beginning any Work on the Project, Owner and Contractor will confer and ensure that any such required employees undergo a check, and Contractor shall fully cooperate with Owner during this process. Upon request by Owner, Contractor will provide any requested information regarding applicable employees, so that the Owner may obtain criminal history recommended information on such employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

3.4.5.3 For the purposes of this Section, "covered employees" means employees, agents, or subcontractors of

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Contractor or any of Contractor's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

3.4.5.4 Any subcontractor entity of the Contractor shall be required by the terms of their contract with Contractor to comply with the same terms set forth above regarding such subcontracting entity's employees.
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§ 3.5.3 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 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 from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected, not to exceed three (3) months.

§ 3.5.8 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be

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completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

~~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.~~**§ 3.6.1** The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7.2 ~~The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.~~In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 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. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

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§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

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.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, ~~profit,~~ 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~~ Section 3.8.2.1 and (2) changes in Contractor's costs under ~~Section 3.8.2.2.~~Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

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§ 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. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

.1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

.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 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 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, which shall not unreasonably be withheld or delayed. .

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information 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.~~contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

.1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.

.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

.4 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the

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Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.

.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the 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.

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§ 3.10.3 ~~The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.

.2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.5 If reasonably required by Owner, Contractor shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially

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entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

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§ **3.11.1** Contractor shall make available, at theContractor's office, 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.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall ~~be entitled to rely upon the adequacy and accuracy~~ not be responsible for the adequacy of the performance and design criteria ~~provided~~ specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this ~~Section 3.12.10,~~ 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.

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3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

~~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.~~**§ 3.13.1** 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. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 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.~~ Contract and shall, not less than two times 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.~~materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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§ 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.

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§ 3.18.1 ~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES AND RELEASES ALL CLAIMS AGAINST AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND THEIR RESPECTIVE AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, OWNER'S CONSULTANTS, THE ARCHITECT AND THE ARCHITECT'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 ~~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.~~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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR

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DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

.5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 BUSINESS STANDARDS

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 ANTITRUST VIOLATION

§ 3.21.1 To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractor and suppliers.

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§ 4.1.2 ~~Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~Intentionally deleted.

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§ 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.~~ Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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§ 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. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the ~~Project. Communications~~ Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.6 The Architect or the Owner 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 or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to 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. If any submittal does not

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comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

...

§ 4.2.11 ~~The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. 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 decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The ~~Architect's~~ Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and not expressly overruled in writing by the Owner.

§ 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.~~information at no additional expense to the Owner.

4.2.15 The Architect may appoint an employee or other person to assist the Architect 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 from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same

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§ 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, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, actually and directly 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.

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§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

~~**§ 5.4.1** 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 for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and~~
- ~~**.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.~~

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~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~

~~**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall 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. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 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; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may, in the Owner's sole discretion, 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.

...

§ 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~~ Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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§ 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.~~

...

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10 of the cost (0% for change orders to be paid out of any contingency allowance).

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.2 For the Contractor, for the Work performed by the Contractor's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.

.4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2.1 A Change Order is a written instrument ~~prepared by the Architect and signed by the Owner, Contractor, and Architect~~ initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

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.2 The amount of the adjustment, if any, ~~in~~ to the Contract Sum; and

.3 The extent of ~~the adjustment, if any, in the Contract Time.~~adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

...

.4 As provided in ~~Section 7.3.4.~~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 determine 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.~~ Section 7.1.4. In such case, and also under ~~Section 7.3.3.3,~~ Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and 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~~ Section 7.3.4 shall be limited to the following:

...

.4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and

.5 Costs of supervision and field office personnel directly attributable to the ~~change.~~change only if the adjustment causes an extension of the Contract Time.

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§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost ~~as confirmed by the Architect.~~ plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

...

§ 8.1.2 The date of commencement of the Work ~~is the date established in the Agreement.~~shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has

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been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with ~~Section 9.8.~~Section 9.8.

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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§ 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.~~Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

...

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are 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.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.7 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 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 employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

...

§ 8.3.3 This ~~Section 8.3~~ Agreement does not ~~preclude~~ permit recovery of damages for delay by ~~either party under other provisions of the Contract Documents.~~the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

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...

§ 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. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.
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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~**§ 9.2.1** Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 ~~At least ten days before the date established for each progress payment,~~ In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under ~~Section 9.2,~~ Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect ~~retainage if provided for in the Contract Documents.~~other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in ~~Section 7.3.9,~~ Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

...

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 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.~~Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

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§ 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 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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§ 9.5.1 The Architect or the Owner 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~~ 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.~~ 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 or Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, ~~including~~ including, but not limited to, loss resulting from acts and omissions described in ~~Section 3.3.2, because of~~Section 3.3.2, because of:

- **.1** ~~defective~~ Defective Work not remedied;
- **.2** ~~third~~ 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~~ Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- **.4** ~~reasonable~~ Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** ~~damage~~ Damage to the Owner or a Separate Contractor;
- **.6** ~~reasonable~~ Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- **.7** ~~repeated~~ Repeated failure to carry out the Work in accordance with ~~the Contract Documents.~~ the Contract Documents;
- **.8** Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- **.9** Evidence of financial inability to perform the Contract fully;
- **.10** Failure to submit record documents required by the Contract; or
- **.11** Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, ~~that party~~ the Contractor may submit a Claim in accordance with Article 15.

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§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor ~~shall pay each Subcontractor, no later than seven days after~~ shall, within ten (10) days following receipt of payment from the Owner, ~~the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.~~pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. 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.

...

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, 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. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 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.~~use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in

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nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

.2 Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

...

§ 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.~~

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

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§ 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 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 as provided under ~~Section 9.8.2.~~ 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.

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§ 9.9.3 Unless ~~otherwise agreed upon,~~ expressly 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.

...

§ 9.10.1 ~~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~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been 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.~~certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 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~~ The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other ~~indebtedness~~ liabilities connected with the Work for which the Owner or the Owner's property might be responsible ~~or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may~~ have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall 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.~~discharge any such lien or indemnify the Owner from liability.

§ 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 without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it~~ The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days

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after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of ~~Claims.~~any claims by the Owner.

§ 9.10.4 ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~

~~**.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~

~~**.2** failure of the Work to comply with the requirements of the Contract Documents;~~

~~**.3** terms of special warranties required by the Contract Documents; or~~

~~**.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~Intentionally deleted.

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§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

~~**§ 10.1 Safety Precautions and Programs**~~

~~The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.~~

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

.1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

.2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

.3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

.5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss ~~to~~to:

.1 employees ~~on the Work~~ on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected ~~thereby;~~thereby, which protection shall include the

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installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

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.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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§ 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel.~~personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER'S CONSULTANT'S, OR ARCHITECT'S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER'S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

...

~~**§ 10.2.8 Injury or Damage to Person or Property**~~

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be~~

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~~given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 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 To the ~~fullest extent permitted by law,~~ extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in ~~Section 10.3.1~~ Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this ~~Section 10.3~~ Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a 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,~~ Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~Intentionally deleted.

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In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.**§ 10.4.1** 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.

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§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.Intentionally deleted.

§ 11.1.4 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.Intentionally deleted.

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§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Intentionally deleted.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.Intentionally deleted.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.Intentionally deleted.

...

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3)

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~~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 they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 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.~~Intentionally deleted.

~~§ 11.3.2~~ ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

§ 11.3.2 Intentionally deleted.

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~Intentionally deleted.

...

~~§ 11.5.1~~ ~~A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~Intentionally deleted.

~~§ 11.5.2~~ ~~Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~Intentionally deleted.

...

~~§ 12.1.1~~ ~~If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.~~

§ 12.1. If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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§ 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~~ may 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~~ Guaranteed Maximum Price 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.

...

The Contractor shall promptly correct failing Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion ~~thereof or after the date for commencement of warranties established under Section 9.9.1, or~~ thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

...

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

...

§ 12.2.5 Nothing contained in this ~~Section 12.2~~ 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~~ 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

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Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

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The ~~Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

...

§ 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,~~ 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.

...

§ 13.4.1 § 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public ~~authorities.~~ authorities having jurisdiction. 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.~~ for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written 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

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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~~ Owner shall provide or contract 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.~~ approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

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~~Payments~~ Undisputed payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

§ 13.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.7 CONTRACTORS RECORDS

§ 13.7.1 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.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least ten year (10) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the ~~Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees,~~

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Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of ~~the Work, for any of the following reasons:~~the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

.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~~ the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract ~~Documents; or~~Documents.

.4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~Intentionally deleted.

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ 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,~~ Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is ~~less.~~less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in ~~Section 14.1.1~~ Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment ~~for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ in an 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 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in ~~Section 14.1.3.~~Section 14.1.3.

...

.2 fails to make payment to Subcontractors ~~or suppliers~~ for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or ~~suppliers;~~Suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner

.5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or

~~**.4**~~ **.6** otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the

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Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
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.2 Accept assignment of subcontracts pursuant to ~~Section 5.4;~~ Section 5.4; and
.3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in ~~Section 14.2.1,~~ Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

...

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the ~~Work,~~ Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time ~~shall be adjusted for~~ may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1.~~ delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the ~~extent~~extent:

.1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted,~~ was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause.~~cause by giving Contractor seven (7) days notice.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor ~~shall~~shall:

...

.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.~~orders related to the Project.

§ 14.4.3 In case of ~~such~~ termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.
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~~**§ 15.1.2 Time Limits on Claims**~~

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ the Contractor and Owner, must be initiated within 21 days after occurrence of the event giving rise to such ~~Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~Claim. Claims must be initiated by written notice to the other party Architect and the Owner.

§ 15.1.3.2 Claims by ~~either the Owner or~~ Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the ~~Initial Decision Maker~~ Architect is required.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7~~ Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the ~~Initial Decision Maker's~~ Owner's decision, subject to the right of ~~either party~~ the Contractor to proceed in accordance with this Article 15. ~~The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the ~~Contract Sum,~~ Guaranteed Maximum Price , notice as provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

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§ 15.1.6.2 ~~If adverse~~ The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a ~~Claim~~ claim for additional time, such Claim shall be documented by data substantiating ~~that weather conditions were abnormal for the period of time,~~ such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time

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pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

~~**§ 15.1.7 Waiver of Claims for Consequential Damages**~~

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

~~**.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~

~~**.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.1.7 Calculating Claims for Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor or Owner, the following standards will apply:

.1 No indirect or consequential damages will be allowed.

.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

.4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2.1 ~~Claims, 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 Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision~~ 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any ~~Claim. If an initial decision has not been rendered within 30 days~~ Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the ~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten (10) days of ~~the~~ receipt of ~~a~~ the Claim take one or more of the following actions: (1) request additional supporting data from the ~~claimant or a response with~~

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~~supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect 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 Owner's expense.~~Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the ~~Initial Decision Maker~~ Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the ~~Initial Decision Maker~~ Architect when the response or supporting data will be furnished, or (3) advise the ~~Initial Decision Maker~~ Architect that no supporting data will be furnished. ~~Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

§ 15.2.5 ~~The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~Intentionally deleted. .

§ 15.2.6.1 ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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§ 15.2.8 ~~If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~**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.

...

§ 15.3.1 ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

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§ 15.3.2 ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

.1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and

.2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

...

§ 15.4.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

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§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 17.3 The Contractor represents and warrants to the Owner that the Contractor does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

§ 17.4 The Contractor represents and warrants to the Owner that the Contractor does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

§ 18.1 Pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least $1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least $1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the

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District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

§ 18.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:	**CONTRACTOR**:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT	**BRAUN & BUTLER**
By:	**By:**
Signature	**Signature**
Pam Sanchez, Acting Superintendent	
(Printed name and title)	*(Printed name and title)*
Date:	Date:

~~**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on~~

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the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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Certification of Document's Authenticity

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I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:54:40 ET on 02/13/2025 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney for Lake Travis ISD

(Title)

02/13/2025

(Dated)

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AGENDA ITEM ACTION SHEET

AGENDA ITEM
Agreement with JG Consulting regarding Executive Search for Superintendent of Schools

RECOMMENDED ACTION
Approve the executive search agreement between Lake Travis ISD and JG Consulting.

RATIONALE
Retain the services of an experienced and reputable search organization to assist in the executive search of a Superintendent of Schools for Lake Travis ISD.

BUDGET PROVISIONS
$30,000

RESOURCE PERSONNEL
Erin Archer – School Board President
Chad Crowson – General Counsel

ATTACHMENTS
Executive Search Agreement

MEETING DATE
February 19, 2025

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

EXECUTIVE SEARCH AGREEMENT

This Agreement is entered into and effective as of the ___day of February, 2025, and is by and between **LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT** ("CLIENT") and **ONE-FOURTH CONSULTING, LLC** ("JG CONSULTING").

CLIENT is seeking to retain the services of an experienced and reputable search organization to assist it in the executive search of a SUPERINTENDENT OF SCHOOLS. JG CONSULTING has the requisite qualifications and experience to assist CLIENT and is willing to provide such assistance. Accordingly, the parties desire to reduce their agreement to engage in writing.

Therefore, the parties agree as follows:

1. Term: The term of this Agreement shall begin on February 19, 2025 and shall conclude upon the hiring and contracting with the Superintendent of Schools.

2. Duties: JG CONSULTING's duties include advertising, search, recruitment, application and resume review, public domain search, complete reference checks and presentation of qualified candidates according to the needs as stated by the CLIENT as outlined by CLIENT's descriptions of same. Additional details on the scope of this agreement can be found in the Proposal for services that are incorporated herein as of set out in full as Exhibit A. In the event of inconsistency between this Agreement and Exhibit A, the terms and conditions in this Agreement shall prevail and supercede the terms and conditions found in Exhibit A.

3. Written Reports: CLIENT may periodically request, and JG CONSULTING shall provide upon such request project plans, progress reports and a final results report.

4. Confidentiality: As provided and permitted by law, JG CONSULTING shall maintain in strictest confidence any information obtained in the course of the transaction set forth in this Agreement. Any breach of this provision shall enable CLIENT to terminate this Agreement for cause as set forth in Section 15. CLIENT and JG CONSULTING shall comply with all applicable State and Federal laws, including all State and Federal confidentiality requirements. JG CONSULTING agrees that it will safeguard all personal information regarding potential candidates for the Superintendent position and will ensure that such information shall not be disclosed except to the CLIENT for the sole purpose of assisting in the Superintendent selection process. To the extent required by law, JG CONSULTING agrees to require all applicants to sign releases, waivers and other notices, and if JG CONSULTING will be obtaining information from a consumer reporting agency, JG CONSULTING will comply with the Fair Credit Reporting Act ("FCRA")(15 U.S.C. § 1681) and related state laws. To the extent the FCRA or related state laws require a specific waiver, JG CONSULTING will obtain a signed waiver from each candidate before contacting a consumer reporting agency regarding that candidate. JG CONSULTING will maintain the confidentiality of the product of all work under this Agreement to the extent required by law. Notwithstanding, both parties agree that this Agreement and related records is subject to the Texas Public Information Act.

5. Background Investigations/Disclosure of Information to District: JG CONSULTING agrees it shall disclose to the CLIENT all known information of a positive or negative nature regarding candidates for the Superintendent position. With respect to the group of applicants selected for an interview by the Board, JG CONSULTING agrees it shall, in good faith and with due diligence, conduct comprehensive reference calls on each applicant to include the verification of all related employment experiences. In addition, JG CONSULTING will arrange for comprehensive criminal, credit, and background checks to be conducted by a third party. JG CONSULTING shall provide comprehensive written profiles, as described in Exhibit A, to Client on each of the finalists to the Board following the interviews of each candidate.

JG CONSULTING agrees not to refer any candidate for the Superintendent position to the Board unless JG CONSULTING reasonably believes that the candidate can lawfully satisfactorily perform the position and that the information contained in the candidate's application materials is true and complete.

6. Independent Consultant: This Agreement shall not render JG CONSULTING an employee, partner, agent of, or joint venture with CLIENT for any purpose. JG CONSULTING is and shall remain an independent consultant in his/her relationship to CLIENT. CLIENT shall not be responsible for withholding taxes with respect to JG CONSULTING's compensation hereunder. JG CONSULTING shall have no claim against CLIENT hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

7. Insurance: Without limiting JG CONSULTING'S indemnification (Section 8 of this agreement), it is agreed that JG CONSULTING shall secure and maintain in full force and effect during the term of this Agreement, a one million dollar ($1,000,000.00) professional liability (Omissions and Errors) insurance policy and a comprehensive, one million dollar ($1,000,000.00) general liability policy to protect the CLIENT from damages to include claims arising from bodily injury, including death, or from claims for personal damages, including, but not limited to, defamation, invasion of privacy, or breach of confidentiality, and from claims for damages to property which may arise out of, or result from, JG CONSULTING's responsibilities under this Agreement, whether such acts or omissions be by JG CONSULTING or anyone directly or indirectly employed by JG CONSULTING.

8. Indemnity: JG CONSULTING shall defend, indemnify and hold harmless CLIENT and any associated Board members, officers, employees or its agents or representatives, against any and all claims, actions, liabilities and losses, including attorney's fees and costs, by whomever asserted, of acts, errors, or omissions on the part of officers, employees, agents, consultants or contractors arising out or related to of any activities in the performance of this Agreement. Each party shall be given sufficient notice to enable it to participate and conduct an appropriate defense to any claims made.

9. Successors and Assigns: All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and the respective heirs, if any, successors, and assigns. JG CONSULTING shall not assign any of his/her rights under this Agreement or delegate the performance of any of his/her duties hereunder, without the prior written consent of CLIENT.

10. Choice of Law; Right to Injunction: The laws of the state of **TEXAS** shall govern the interpretation of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto. JG CONSULTING expressly agrees that CLIENT shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by JG CONSULTING. Resort to such equitable relief, however, shall not be construed to be a waiver of any other rights or remedies that CLIENT may have for damages or otherwise. Venue for any controversies arising out of the terms of this Agreement or its interpretation shall lie in a court competent jurisdiction in the **County of Travis, Texas**.

11. Waiver: Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

12. Compliance with Laws: Both parties agree to comply with all applicable Federal and Texas laws governing their relationship or the transaction contemplated under this Agreement including, but not limited to the Fair Credit Reporting Act. JG CONSULTING further acknowledges and agrees that it is aware of CLIENT's equal opportunity and nondiscrimination policies and all activities conducted on CLIENT's behalf under this agreement shall be in compliance with their policies. CLIENT and JG CONSULTING shall comply with all applicable State and Federal laws, including, but not limited to the Fair Credit Reporting Act.

13. Notices: Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served or if deposited in the United States mail. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand, or other communication is given by mail, such notice

shall be conclusively deemed given three days after deposit thereof in the United States mail addressed to the party to whom such notice, demand, or other communication is to be given as follows:

If to JG CONSULTING:

James Guerra – President & CEO
ONE-FOURTH CONSULTING, LLC
605 E. University Avenue, Suite 101
Georgetown, TX 78626

If to LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT:

Erin Archer – Board President
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT
3322 Ranch Road 620 South
Lake Travis, TX 78732

Either party hereto may change its address for purposes of this paragraph by written notice given in the manner provided above.

14. Modification or Amendment: No amendment, change, or modification of this Agreement shall be valid unless in writing signed by the parties hereto.

15. Entire Understanding: This Agreement and any exhibits attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

16. Unenforceability of Provisions: If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

17. Termination:
    a. Without Cause. JG CONSULTING or CLIENT may terminate this contract at any time for any reason by giving at least **fourteen (14)** days-notice in writing. If the contract is terminated by CLIENT as provided herein, JG CONSULTING shall be paid a mutually agreed upon payment as negotiated between JG CONSULTING and CLIENT for the work completed as of the date of notification of termination. JG CONSULTING shall incur no additional fees and expenses payable by CLIENT after notice of termination without written authorization from CLIENT.
    b. For Cause. Either party may terminate this Agreement immediately upon the occurrence of any of the following:
        i. Material breach of this Agreement.
        ii. Prospective inability of either party to complete its responsibilities as set forth in this Agreement.
        JG CONSULTING shall incur no additional fees and expenses payable by CLIENT after notice of termination without written authorization from CLIENT.

18. Termination or Resignation of Selected Superintendent: JG CONSULTING agrees that if the Superintendent selected by the CLIENT as a result of the search process ceases employment with the District within two (2) years of commencement of Superintendent's employment, for whatever reason, JG will conduct a new search at no additional cost to CLIENT, except that that CLIENT will reimburse JG in relation to that new search for the cost of advertising and all related travel and expenses incurred by the JG CONSULTING staff and faculty, if receipts are provided. Should the Superintendent discontinue service on behalf of the CLIENT for health related matters, JG CONSULTING will not be obligated to support an additional Superintendent executive search.

19. Fee Structure: CLIENT shall pay ONE-FOURTH CONSULTING, LLC (D/B/A JG Consulting) a cost not to exceed $30,000 for the executive search engagement by the following schedule for services:
    a. No later than 30 business days after contract approval – $15,000 (first installment);
    b. Upon the hiring and contracting with the new Superintendent - $15,000 (final installment).

    This amount includes all fees and expenses incurred by JG Consulting including but not limited to the employment of additional staff of consultants, advertising, mileage, copies, postage, and travel expenses.

20. Travel Expenses: Estimated travel and expenses per Superintendent candidate shall consist of reasonable airfare and hotel accommodations, booked three weeks in advance of travel whenever possible plus federal per diem for Austin, Texas.

    IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

JG CONSULTING

By: _____ _____
James Guerra, President & CEO Date Signed

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

By: _____ _____
Name: Erin Archer Date Signed

Title: President, Board of Trustees

AGENDA ITEM ACTION SHEET

AGENDA ITEM
January 15, 2025 Regular Board Meeting Minutes, January 22, 2025 and February 7, 2025 Special Called Board Meeting Minutes

RECOMMENDED ACTION
For approval with the Consent Agenda.

RATIONALE
Minutes for each Board meeting shall be approved and on file in the Superintendent's office.

BUDGET PROVISIONS
None

RESOURCE PERSONNEL
Suzanne Kelbaugh - Executive Assistant to the Superintendent of Schools

ATTACHMENTS
January 15, 2025 Regular Board Meeting Minutes
January 22, 2025 Special Called Board Meeting Minutes
February 7, 2025 Special Called Board Meeting Minutes

MEETING DATE
February 19, 2025

Minutes of Board Meeting
The Board of Trustees
Lake Travis Independent School District
A meeting of the Board of Trustees of Lake Travis Independent School District was held on January 15, 2025, beginning at 6:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 6:00 p.m.

Quorum Determination
Trustees in attendance were John Aoueille, Erin Archer, Lauren White, Kim Flasch, Robert Aird, Phillip Davis, and Keely Cano.

Pledge of Allegiance and Moment of Silence
Chris Woehl, led the Pledge of Allegiance. A moment of silence was then observed.

Recognition Items
- **Chad Crowson, General Counsel**
  The Lake Travis ISD Administration is excited to announce the selection of Chad Crowson as the district's new General Counsel, effective January 21. Mr. Crowson brings a unique blend of legal expertise and educational leadership experience that will greatly benefit our students, staff, and community.

  A licensed attorney with the State Bar of Texas since 2011, Mr. Crowson holds a Juris Doctor from the University of Houston Law Center. In addition to his legal qualifications, he earned a Master of Education in Educational Administration from Lamar University and a Bachelor of Arts in Government from the University of Texas at Austin. Mr. Crowson also holds certifications as a principal and social studies teacher, demonstrating his deep understanding of both educational policy and classroom instruction. Most recently, he served as General Counsel for Midland ISD where he provided legal advice to district leaders, drafted and negotiated contracts, monitored legislative updates, and guided policy development.

  In addition to his legal career, Mr. Crowson brings years of educational leadership experience. He has held roles such as Executive Director of Choice Programs, Access, and Support at Ector County ISD where he spearheaded initiatives to improve access to high-quality, best-fit schools for students. Mr. Crowson's leadership roles have also included Director of Planning and School Choice, Leadership Coordinator, and high school principal. With a strong background in both legal counsel and school administration, he is uniquely positioned to support Lake Travis ISD's mission of empowering students to become lifelong learners.

Recognition only.

- **Lake Travis High School - 2024 UIL State Open Class Marching Band Contest**
  The Lake Travis High School Cavalier Band concluded its fall season with an incredible performance at the 2024 UIL State Open Class Marching Band Contest held November 11, 2024 at the Alamodome in San Antonio. The band fielded 200 students and performed "Winter Bird." This was the fifth consecutive appearance at the state marching contest for Lake Travis High School. Representing Conference 6A/Region 32/Area H are the following:

    - Maria Andrianova

- Matthew Benson
- Lottie Draper
- Trajan Emmert
- Dylan Loomer
- Collin Meyer
- Abhinav Muktineni
- Stella Pirtle
- Jacob Tetzlaff

The Lake Travis Cavalier Band is under the direction of Richard Hicks. He is assisted by Brittany Baptista, Douglas Bell, Michael Fairbrother, Jordan Reddicks, and Ben Zein.

Recognition only.

- **Lake Travis High School 2025 Texas Music Educators Association All-State Musicians**
  The musical talents of three Lake Travis High School students have earned each of them a place on the 2025 All State Band and Orchestra as determined by the Texas Music Educators Association (TMEA). According to TMEA, All State is the highest honor a Texas music student can receive. Approximately 1,875 students were selected through a process that began in the fall of 2024 with over 70,000 students from around the state vying for the honor to perform in one of 18 ensembles (band, choir, and orchestra). Only the top 2.6% of students who initially audition become All-State musicians. The following students from Lake Travis High School were selected as All-State musicians:

  - Band
    - Nirujen Manoharan (freshman) – flute
    - Elliott Shah (junior) - Bb clarinet

  - Orchestra
    - Audrey Huang (junior) - violin

  These students will perform with other Texas All-State musicians on February 14 at the Henry B. González Convention Center in San Antonio as part of the 2025 Texas Music Educators Association Clinic/Convention. Richard Hicks and Ana Macias direct the Lake Travis High School band and orchestra programs, respectively.

Recognition only.

- **School Board Recognition Month**
  With the theme "Leadership for Tomorrow's Texas," the Lake Travis Independent School District proudly joins the Texas Association of School Boards and other districts across the state to recognize and thank school trustees for their service throughout January 2025 as part of School Board Recognition Month.

  Seven volunteers in our community serve as elected officials representing over 11,100 students and their families. These public servants make difficult decisions and develop policies that impact complex educational and social issues in our community. Despite the significant time and effort required, they are not compensated for their service.

Serving on the LTISD school board are Erin Archer, President; Robert Aird, Vice President; Keely Cano, Secretary; and Trustees John Aoueille, Phillip Davis, Ph.D., Kim Flasch, and Lauren White.

School administrators will celebrate trustees with campus activities throughout the month.

Recognition only.

Public Comments/Citizen Participation

1. Valorie Loomer

Presentation/Discussion Items

- **Population and Survey Analysts (PASA) 2024 Demographic Update**
  Lake Travis ISD is diligent in anticipating the programming and facilities needs of the District. Administration's ability to accurately forecast and plan for the needs of Lake Travis students requires timely and meaningful data, and demographic studies serve as one source of the needed information. Population and Survey Analysts (PASA) is highly regarded as one of the premier demographers in the state. PASA has performed a demographic study update and a summary of their findings will be presented to the Board of Trustees. Presenter was Stacey Tepera from PASA.

This item was for Presentation/discussion only; no action was requested.

Public Hearing

- **2023-2024 Texas Academic Performance Report District Annual Report**
  This presentation fulfills the requirement of law (Texas Education Code Chapter 39) that the Board of Trustees hold a Public Hearing providing information to the community regarding the educational performance for the 2023-2024 school year. Kathy Burbank, Director of Accountability presented the material.

  Components:
  - Annual Report - Texas Annual Performance Report (TAPR)
  - PEIMS Financial Standard Reports
  - District Accreditation Status
  - Campus Performance Objectives
  - Special Education Determination Status
  - Report on Violent or Criminal Incidents
  - Student Performance in Postsecondary Institutions
  - Progress Toward Meeting HB 3 Goals

  Public Speakers

  1. **No Public Comment**

Public Hearing.

- **LTE Targeted Improvement Plan (TIP) and Effective School Framework – Focused Support Grant Update**
  This presentation fulfills the requirements of Texas Education Code 39A.057 to notify the public and seek public comment regarding the Targeted Improvement Plan (TIP) for Lake Travis Elementary. The TIP will be reviewed with the Board and community. The presentation will include information about campus performance as well as continued targeted improvement efforts

aligned to the Effective School Framework goals that have been in place since 2022. Amanda Prehn, Director of C&I and Sebastian Espinoza, Principal, Lake Travis Elementary presented the information to the board.

Public Speakers

1. **No Public Comment**

Public Hearing.

Presentation / Discussion Items

- **Campus Presentation – Lake Travis Middle School**
  The purpose of this presentation is to provide the Board of Trustees and the community with a snapshot of the impactful work being done by Lake Travis Middle School. This includes highlighting significant achievements by students, staff, and families that contribute to the overall success of the school community.

  The expected outcome of this presentation is to strengthen the connection between the campus and the community and give the Board of Trustees the opportunity to engage in conversations with the campus principal that support the success of all stakeholders.

This item was for presentation/discussion only; no action was requested.

- **December 2024 Monthly Financial Reports – Statement of Revenues and Expenditures, Balance Sheet, Tax Statement, 2018/2023/2024 Capital Projects Report and Quarterly Investment Report**

Pam Sanchez, Acting Superintendent/Assistant Superintendent of Business Services, presented the following documents:

1. Statement of Revenues and Expenditures – December 2024
2. Balance Sheet – December 2024
3. Tax Statement – December 2024
4. 2018/2023/2024 Capital Projects Report – December 2024

This item was for presentation/discussion only; no action was requested.

- **2025-2026 Preliminary Budget Overview**
  Pam Sanchez, Acting Superintendent/Assistant Superintendent of Business Services, presented an update on the district strategic planning. Section 44.002 through 44.006 of the Texas Education Code establishes the legal basis for the budget development in school districts. These codes require that the District prepare a budget by the date set by the State Board of Education, currently August 20th for districts with an August 31st fiscal year-end. The budget document and the Annual Financial and Compliance Report are the primary vehicles used to present the financial plan and the results of operations of the District. The primary purposes of this budget document is to provide timely and useful information concerning the past, current and projected financial status of the general operations of the District, in order to facilitate financial decisions that support the educational goals of the District. Its intention is to serve as a starting point for 2025-2026 general operating budget discussions rather than to serve as a final budget document.

This item was for presentation/discussion only; no action was requested.

- **Technology Bond Expenditure Report**
  Chris Woehl, Executive Director of Technology, presented, that the 2023 Bond Program provided funding for purchasing technology items, such as classroom educational and instructional equipment and infrastructure and operational equipment. Decisions about educational technology and infrastructure equipment have been discussed, planned, and vetted with the district stakeholders and the District's Long Range Facilities Planning Committee. Per Board Policy CH (Local), the following purchases were made via a cooperative purchasing program of $100,000 or more, are required to be presented to the Board for notification:

  Cisco Unified Communications infrastructure components have been purchased to upgrade legacy datacenter voice hardware district-wide. This purchase leverages the Texas DIR contract and volume purchase pricing from Netsync for a total purchase price of $1,243,422.90

This item was for presentation/discussion only; no action was requested.

- **Board Notification under Board Policy CH (LOCAL) – Relocation of Electric Facilities on Cavalier Drive at Lake Travis High School**
  The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs $100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases that cost $100,000 or more, but shall subsequently report them to the Board:
  1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law.
  2. A purchase made through a cooperative purchasing program, in accordance with law.
  3. A purchase made through a state purchasing program that satisfies the District's obligation for competitive purchasing;
  4. A purchase for produce or fuel.

  Lake Travis ISD has the following budgeted purchase that requires Board notification:
    - Austin Energy fee to relocate electrical lines from overhead to underground as part of the LTHS Cavalier Drive 2023 bond project.

This item was for presentation/discussion only; no action was requested.

Erin Archer called for a recess at 8:00 p.m.
Meeting called back into session at 8:07 p.m.

<u>Consideration Items</u>

- **Order Calling the May 3, 2025 Board of Trustees Election**
  Under the Election Code, the election must be ordered annually by the Board of Trustees. This election is to fill positions designated on the school board as Places 3, 4 and 5 for full, three-year terms.

A MOTION was made by Trustee Kim Flasch and seconded by Trustee Phillip Davis to approve the Order Calling the May 3, 2025 Board of Trustees Election.

The motion passed by a vote of 6 - 0.

****Trustee John Aoueille came into the meeting at 8:10 pm after break****

- **Lake Travis Elementary Targeted Improvement Plan (TIP) and Effective School Framework - Focused Support Grant Update**
  This presentation fulfills the requirements of Texas Education Code 39A.057 to notify the public and seek public comment regarding the Targeted Improvement Plan (TIP) for Lake Travis Elementary. The presentation will include information about campus performance as well as continued targeted improvement efforts aligned to the Effective School Framework goals that have been in place since 2022.

  Texas Education Code 39A.057 requires Board approval of the Targeted Improvement Plan (TIP) for Lake Travis Elementary by February 28, 2025.

A MOTION was made by Trustee Keely Cano and seconded by Trustee Lauren White to approve the Targeted Improvement Plan for Lake Travis Elementary for the Effective School Framework - Focused Support Grant (ESF - FSG) Cycle 3.

The motion passed by a vote of 7 - 0.

- **Selection of Haddon-Cowan Architects for the Lake Travis High School Baseball Field Facilities Project**
  It is in policy of the District that the selection of firms to provide professional services in connection with the District's construction and major maintenance projects be based on demonstrated competence and the professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price.

  Haddon-Cowan Architects was selected based on their experience in similar K-12 projects and the professionals serving on the project teams. The project includes the design of the following facilities at the LTHS baseball field complex:

  - Concession stand
  - Press box
  - Restrooms

A MOTION was made by Trustee Keely Cano and seconded by Trustee John Aoueille to approve the selection of Haddon-Cowan Architects for the Lake Travis High School baseball field facilities construction project as presented.

The motion passed by a vote of 7 - 0.

- **Grant Waterway Setback Protective Easement to Travis County on Elementary #8 HPR Site**
  As a condition to the approval of Travis County Development Permit, Travis County requires the District to grant a non-exclusive waterway setback protective easement on the Elementary #8 Hamilton Pool Road site for the purpose of inspection and monitoring for waterway setback compliance, as applicable. This Protective Easement establishes a permanently managed area for the purpose of a waterway setback. The Protective Easement must remain free of additional construction, development and/or alterations except when specifically approved in a Travis County Development Permit.

A MOTION was made by Trustee Lauren White and seconded by Trustee Phillip Davis to approve the granting of a waterway setback protective easement to Travis County on the Elementary #8 Hamilton Pool Road site and authorize execution of the easement by the Board President or Acting Superintendent.

The motion passed by a vote of 7 - 0.

- **Grant Permanent Water Quality Controls Protective Easement to Travis County on Elementary #8 HPR Site**
  As a condition to the approval of Travis County Development Permit, Travis County requires the District to grant a non-exclusive water quality controls protective easement on the Elementary #8 Hamilton Pool Road site for the purpose of inspecting and monitoring for water quality compliance. The Easement establishes a permanently managed area for the purpose of water quality treatment. The Easement must remain free of additional construction, development, and/or alterations except when specifically approved in a Travis County Development Permit.

A MOTION was made by Trustee Rob Aird and seconded by Trustee Kim Flasch to approve the granting of a permanent water quality control protective easement to Travis County on the Elementary #8 Hamilton Pool Road site and authorize execution of the easement by the Board President or Acting Superintendent.

The motion passed by a vote of 7 - 0.

- **Electric Utility Easement to the City of Austin on Lake Travis High School Site**
  As a part of the ongoing development of the high school campus, the District has requested that certain overhead utility lines be placed underground. In order to accommodate this request, the City of Austin requires an electric utility easement be granted for the property. The easement grants the City of Austin a blanket easement to place, construct, reconstruct, install, operate, repair, maintain, inspect, replace, upgrade or remove (in whole or in part) electric distribution and electric telecommunications lines and systems, consisting of a variable number of electric lines, transformers, and all necessary or desirable appurtenances and structures (the "Facilities"). The District reserves the right to replace this easement with a replacement easement containing a surveyed metes and bounds description of a defined easement area. After final construction and installation of the Facilities, the District may provide the City of Austin a metes and bounds description of the defined easement being an area extending five feet on all sides of the actual installed location of the Facilities.

A MOTION was made by Trustee Phillip Davis and seconded by Trustee Keely Cano to approve the granting of an electric utility easement to the City of Austin on the Lake Travis High School campus and authorize execution of the easement by the Board President or Acting Superintendent.

The motion passed by a vote of 7 - 0.

- **Resolution No. 011525-01 Authorizing the Negotiation and Execution of Possession and Use Agreement for Public Education Purposes for Land Necessary for High School #2**
  The District is in the process of purchasing and/or acquiring through eminent domain, as necessary, a fee simple tract of land from the landowner that is necessary for the construction of High School #2. While the District continues the negotiations and/or eminent domain process, the District may have a need to negotiate with the landowners a Possession and Use Agreement that would allow the District access to and control of the land prior to the transfer of ownership to the District. The Administration requests authority to negotiate and execute a Possession and Use

Agreement as deemed necessary by the Superintendent for the specifically identified tract of land listed in the resolution.

A MOTION was made by Trustee Kim Flasch and seconded by Trustee Phillip Davis to approve Resolution No. 011525-01 Authorizing the Negotiation and Execution of Possession and Use Agreement for Public Education Purposes and Land Necessary for High School #2.

The motion passed by a vote of 7 - 0.

- **Resolution No. 011525-02 Authorizing the Negotiation and Execution of Possession and Use Agreements for Public Education Purposes for Land Necessary for Elementary #8**
  The District is in the process of purchasing and/or acquiring through eminent domain, as necessary, two fee simple tracts and two easements from various landowners that are necessary for the construction of Elementary #8 on Hamilton Pool Road. While the District continues the negotiations and/or eminent domain process, the District may have a need to negotiate with the landowners a Possession and Use Agreement that would allow the District access to and control of the land prior to the transfer of ownership to the District. In October 2024, the Board approved Resolution No. 101624-08 authorizing the District to negotiate PUAs with additional payment of consideration to the landowners. The Administration recommends that the Board rescind that resolution and replace it with Resolution No. 011525-02 that authorizes payment in an amount not to exceed the appraised value of the land. Thereafter, any amount paid through the execution of a PUA will be credited to the final cost of the property determined through party negotiations, the award of the Special Commissioners, or judgment, as applicable.

A MOTION was made by Trustee Phillip Davis and seconded by Trustee Kim Flasch to approve Resolution No. 011525-02 Authorizing the Negotiation and Execution of Possession and Use Agreements for Public Education Purposes for Land Necessary for Elementary #8.

The motion passed by a vote of 7 - 0.

Consent Agenda

- **December 11, 2024 Board Meeting and December 17, 2024 Special Called Minutes**
- **Locally Approved Courses for UIL No Pass/No Play Exemptions**

A MOTION was made by Trustee Kim Flasch and seconded by Trustee Phillip Davis to approve the consent agenda items as presented.

The motion passed by a vote of 7 - 0.

Closed Session

Trustees adjourned into Closed Session at 8:21p.m. on January 15, 2025, as permitted by Texas Government Code 551.001 et seq.

A. Section 551.074 - Personnel Matters
   1. The Board will discuss the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of public employees or officials. (This may involve consultation with attorney as permitted under Section 551.071)
   2. Deliberate the Employment Status, Evaluation, Reassignment, Duties, Discipline, or Dismissal of the Superintendent or to Hear a Complaint Against the Superintendent. (This may involve consultation with attorney as permitted under Section 551.071)

B. Section 551.071 - Consultation with Attorney

1. The Board will discuss and receive legal advice from its attorney on matters which should be confidential under Texas Government Code Section 551.071 (2).
2. The Board will discuss and receive legal advice regarding the employment status, evaluation, reassignment, duties, discipline, or dismissal of the Superintendent or to hear a complaint against the Superintendent under Texas Government Code Section 551.071.
3. The Board will discuss and receive legal advice from its attorney regarding pending litigation and/or settlement offer under Texas Government Code Section 551.071(1) including:
    a. Cause No. C-1-PB-24-002432; Lake Travis Independent School District v. Masonwood HP, LTD et al.; Probate Court No. 2, Travis County, Texas
    b. Cause No. C-1-PB-24-002672; Lake Travis Independent School District v. Masonwood HP, LTD et al.; Probate Court No. 2, Travis County, Texas
    c. Cause No. C-1-PB-24-002554; Lake Travis Independent School District v. JPH Capital, Ltd., a Texas limited partnership, Probate Court No. 2, Travis County, Texas
    d. Cause No. C-1-PB-24-002489; Lake Travis Independent School District v. WTF Harrell Property Management LLC; Probate Court No. 1, Travis County, Texas
    e. Cause No. C-1-PB-24-002575; Lake Travis Independent School District v. John Craig Hert; Probate Court No. 1, Travis County, Texas

C. Section 551.072 - Deliberation Regarding Real Property
1. The Board will discuss the purchase, exchange, lease or value of real property. (This may involve consultation with attorney as permitted under section 551.071.)
2. The Board will consider the possible purchase of real property, including a tract of land containing 0.8579 acre out of the William McIntire Survey No. 91, Abstract No. 533, in Travis County, Texas (JPH Capital Fee Tract)
3. The Board will consider the possible purchase of real property, including a tract of land containing 0.4145 acre out of the John Keller Survey No. 25, Abstract No. 2169, in Travis County, Texas (Masonwood Fee Tract).
4. The Board will consider the possible purchase of a real property interest, including a tract of land containing 0.0523 acre out of the William McIntire Survey No. 91, Abstract No. 533, in Travis County, Texas and a tract of land containing 0.1489 acre out of the William McIntire Survey no. 91, Abstract No. 533, in Travis County, Texas (Harrell Easement).
5. The Board will consider the possible purchase of a real property interest, including a tract of land containing 0.0372 acre, more or less out of Lot 94, Block N, Provence Phase 1 Section 4A, a subdivision in Travis County, Texas; and a tract of land containing 0.0143 acre, more or less, out of Lot 94, Block N, Provence Phase 1 Section 4A, a subdivision in Travis County, Texas; and a tract of land containing 0.2660 acre, more or less, out of the WM McIntire Survey, No. 91, Abstract No. 533, in Travis County, Texas; and a tract of land containing 0.4636 acre, more or less, out of the WM. McIntire Survey, No. 91, Abstract No. 533, in Travis County, Texas. (Masonwood Easement)
6. The Board will consider the possible purchase of real property, including a tract of land containing 2.6633 acres out of the Joshua B. Sharpless Survey No. 365, Abstract No. 2124, in Travis County, Texas (Hert Tract).

D. Section 551.0821 - School Board: Personally Identifiable Information About a Public School Student
1. The Board will discuss personally identifiable information about a public school student.

E. Section 551.076 - Deliberation Regarding Security Devices or Security Audits; Closed Meeting. This chapter does not require a governmental body to conduct an open meeting to deliberate:
1. The deployment, or specific occasions for implementation of security personnel or

devices.

Upcoming Meetings and Events

Board President Erin Archer announced the following upcoming meetings and events:

- January 22, 2025 – 6:00 p.m. – Special Called Board Meeting, EDC
- February 19, 2025 – 6:00 p.m. – Monthly Board Meeting, EDC
- March 26, 2025 – 6:00 p.m. – Monthly Board Meeting, EDC

Adjournment

There being no further action, the January 15, 2025 Board of Trustees' meeting adjourned at 12:27 a.m. on January 16, 2025.

_____ _____

Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District

A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on January 22, 2025, beginning at 5:30 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order

President Erin Archer called the meeting to order at 5:33 p.m.

Quorum Determination

Trustees in attendance were Kim Flasch, John Aoueille, Erin Archer, Lauren White, Rob Aird, and Keely Cano. Trustee Phillip Davis was absent.

Pledge of Allegiance and Moment of Silence

Amber King led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment

1. Jennifer Fleck

Closed Session

Trustees adjourned into Closed Session at 5:40 p.m., as permitted by Texas Government Code 551.001 et seq.

Section 551.074 - Personnel Matters

1. The Board will discuss the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of public employees or officials or a complaint against an officer or employee. (This may involve consultation with attorney as permitted under Section 551.071)
2. Deliberate the Employment Status, Evaluation, Reassignment, Duties, Discipline, or Dismissal of the Superintendent or to Hear a Complaint Against the Superintendent. (This may involve consultation with attorney as permitted under Section 551.071)

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2. The Board will discuss and receive legal advice from its attorney regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of public employees or officials or to hear a complaint against an officer or employee under Texas Government Code Section 551.071.
3. The Board will discuss and receive legal advice regarding the employment status, evaluation, reassignment, duties, discipline, or dismissal of the Superintendent or to hear a complaint against the Superintendent under Texas Government Code Section 551.071.
4. The Board will discuss and receive legal advice from its attorney regarding pending litigation and/or settlement offers under Texas Government Code Section 551.071(1) including:
   a. Cause No. C-1-PB-24-002432; Lake Travis Independent School District v. Masonwood HP, LTD et al.; Probate Court No. 2, Travis County, Texas

b. Cause No. C-1-PB-24-002672; Lake Travis Independent School District v. Masonwood HP, LTD et al.; Probate Court No. 2, Travis County, Texas
c. Cause No. C-1-PB-24-002554; Lake Travis Independent School District v. JPH Capital, Ltd., a Texas limited partnership, Probate Court No. 2, Travis County, Texas
d. Cause No. C-1-PB-24-002489; Lake Travis Independent School District v. WTF Harrell Property Management LLC; Probate Court No. 1, Travis County, Texas
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3. The Board will consider the possible purchase of real property, including a tract of land containing 0.4145 acre out of the John Keller Survey No. 25, Abstract No. 2169, in Travis County, Texas (Masonwood Fee Tract).
4. The Board will consider the possible purchase of a real property interest, including a tract of land containing 0.0523 acre out of the William McIntire Survey No. 91, Abstract No. 533, in Travis County, Texas and a tract of land containing 0.1489 acre out of the William McIntire Survey no. 91, Abstract No. 533, in Travis County, Texas (Harrell Easement).
5. The Board will consider the possible purchase of a real property interest, including a tract of land containing 0.0372 acre, more or less out of Lot 94, Block N, Provence Phase 1 Section 4A, a subdivision in Travis County, Texas; and a tract of land containing 0.0143 acre, more or less, out of Lot 94, Block N, Provence Phase 1 Section 4A, a subdivision in Travis County, Texas; and a tract of land containing 0.2660 acre, more or less, out of the WM McIntire Survey, No. 91, Abstract No. 533, in Travis County, Texas; and a tract of land containing 0.4636 acre, more or less, out of the WM. McIntire Survey, No. 91, Abstract No. 533, in Travis County, Texas. (Masonwood Easement)
6. The Board will consider the possible purchase of real property, including a tract of land containing 2.6633 acres out of the Joshua B. Sharpless Survey No. 365, Abstract No. 2124, in Travis County, Texas (Hert Tract).

Section 551.0821 - School Board: Personally Identifiable Information About a Public School Student

1. The Board will discuss personally identifiable information about a public school student.

Section 551.076 - Deliberation Regarding Security Devices or Security Audits; Closed Meeting. This chapter does not require a governmental body to conduct an open meeting to deliberate:

1. The deployment, or specific occasions for implementation of security personnel or devices.

The board returned to open session at 9:21 p.m. Trustee Phillip Davis arrived in closed session.

Open Session

- **Approve Final Settlement of Cause No. C-1-PB-24-002432, LTISD v. Masonwood HP and Cause No. C-1-PB-24-002672, LTISD v. Masonwood HP**

A MOTION was made by Trustee Kim Flasch and seconded by Trustee Phillip Davis to ratify and approve the Rule 11 agreement entered into between Masonwood and Lake Travis ISD and authorize settlement of the two pending eminent domain matters between the parties pursuant to the terms discussed in closed session.

The motion passed/failed by a vote of 7 - 0.

Adjournment

There being no further action, the January 22, 2025 Board of Trustees' Special Called meeting adjourned at 9:22 p.m.

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Erin Archer, President **Keely Cano, Secretary**

Minutes of Special Called Board Meeting
The Board of Trustees
Lake Travis Independent School District
A Special Called Board Meeting of the Board of Trustees of Lake Travis Independent School District was held on February 7, 2025, beginning at 5:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order
President Erin Archer called the meeting to order at 5:00 p.m.

Quorum Determination
Trustees in attendance were Kim Flasch, Erin Archer, Lauren White, Phillip Davis, and Rob Aird. Trustee John Aoueille was absent.

Pledge of Allegiance and Moment of Silence
Amber King, led the Pledge of Allegiance. A moment of silence was then observed.

Public Comment
1. Jennifer Fleck – Mismanagement of Superintendent
2. Melody Zare – Safety and Security Breach of Contract Paul Norton
3. Susan Harbin – Superintendent & Board Actions
4. Kathryn Sartor – Superintendent Resignation

Closed Session
Trustees adjourned into Closed Session at 5:15 p.m., as permitted by Texas Government Code 551.001 et seq.

Section 551.074 - Personnel Matters
1. Deliberate the Employment Status, Evaluation, Reassignment, Duties, Discipline, or Dismissal of the Superintendent. (This may involve consultation with attorney as permitted under Section 551.071)

Section 551.071 – Consultation with Attorney
1. Consultation with Attorney
    1. The Board will discuss and receive legal advice from its attorney on matters which should be confidential under Texas Government Code Section 551.071(2).
    2. The Board will discuss and receive legal advice regarding the employment status, evaluation, reassignment, duties, discipline, or dismissal of the Superintendent under Texas Government Code Section 551.071.

The board returned to open session at 7:54 p.m.

Open Session
- **Consider and Take Possible Action on Resignation of the Superintendent of Schools**

A MOTION was made by Trustee Lauren White and seconded by Trustee Keely Cano to accept Mr. Norton's resignation and retirement and authorize the Board President to execute the voluntary retirement agreement.

The motion passed/failed by a vote of 6 - 0.

Adjournment

There being no further action, the February 7, 2025 Board of Trustees' Special Called meeting adjourned at 7:56 p.m.

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Erin Archer, President **Keely Cano, Secretary**