



A TRUSTED PARTNER

**BTC ■ CONSTRUCTION MANAGER**

1450 N. Jim Wright Freeway

White Settlement, Texas 76108

(817) 467-4981 ■ (817) 467-5619

# **Castleberry ISD High School Additions**

## **Proposal Package Manual**

September 9, 2024



# Castleberry ISD High School Addition

BTC Project #24-472

BTC Proposal Package Manual

September 9, 2024

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Instructions to Proposers

I. ELECTRONIC BIDDING DOCUMENTS

- a. The complete bidding documents for this project will be available in electronic, downloadable format for subcontractor and supplier use in preparing proposals for this project via SmartBidNet. Access to the bidding documents will be available through a link on the BTC website “www.btcbuilds.com” and following the instruction under the “projects” tab.
- b. The Proposal Package Manuals detailing specific work required and contractual obligations will be available with the bidding documents. BTC is not responsible for partial information obtained from other bidding websites or plans rooms. Addenda will be posted on the SmartBidNet website only and registered proposers will receive a notification when addenda are posted. It is the responsibility of the proposers to obtain all of the addenda.

II. RECEIPT AND OPENING OF PROPOSALS

- a. Competitive Proposals will be received by BTC, 1450 N. Jim Wright Freeway, White Settlement, Texas. The Proposal shall be received by 2:00 p.m., on Wednesday, October 2, 2024, via email to [estimating@btcbuilds.com](mailto:estimating@btcbuilds.com).
- b. A pre-proposal meeting will be held for all interested proposers at 9:30 a.m. on September 24, 2024, at Castleberry High School, 215 Churchill Road, Fort Worth, Texas 76114. Interested parties will park across the street from the high school at 104 Churchill Road, Fort Worth, Texas 76114 and enter the high school through the southeast door into the Cafeteria and Competition Gym building, where they will be conducted to the meeting location. A tour of the existing spaces to be renovated will be conducted immediately after a short discussion of the project requirements. This pre-proposal meeting is not mandatory but highly recommended and all proposers are responsible for any information discussed during the meeting.

III. PREPARATION OF PROPOSAL

- a. Proposers will include all items indicated in the Project Manual and Construction Drawings for a complete proposal. Any deviations from the Project Manual or Construction Drawings must be listed as specific exclusions. By submitting a proposal each Proposer constitutes an incontrovertible representation by the Proposer that he has complied with requirement of the Contract Documents.
- b. Payment and Performance bonds **may** be required by individual subcontractors for 100% of the proposed contract. Include as a separate line item, separate from the base bid amount, the cost to provide Payment and Performance bonds should bonds be required.
  - i. Minimum requirements for acceptable bond ratings are:
  - ii. B+ to B++ rating with a Financial Size Category of IX (9) or higher to A++ rating with a Financial Size Category of IV (4) or higher



**Instructions to Proposers**

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- iii. A sample bond form has been provided in this Project Manual, deviations from the bond form will require review and approval by BTC. **Provide a separate line item for the cost of bonds. Please acknowledge receipt of any addendum and alternates with your bid.**

**IV. QUESTIONS**

- a. All questions regarding the proposal shall be submitted in writing via email to Brian Rhoades at brhoades@btcbuilds.com at least 3 business days in advance of the proposal’s due date. Responses to questions will be distributed as addenda.
- b. It shall be the responsibility of each proposer to notify BTC in writing of any errors, omissions, discrepancies, unworkability and noncompliance with codes and regulations within the contract documents.

**V. CONTRACT AWARD**

- a. Contracts shall be awarded based on the best value to the Owner that complies with the conditions of the proposal package, based on the selection criteria of the Construction Manager. However, BTC reserves the right to reject any and all proposals and to waive any informality in proposals received whenever any such rejection or waiver is in the interests of the Owner and Construction Manager. Trade contractors will be required to execute the attached Subcontract Agreement. Qualifications/exceptions concerning this Subcontract Agreement on bid form are **NOT** acceptable. Any exceptions to this Subcontract Agreement are required to be submitted to Joel Martin at least three (3) days prior to bid to be considered by BTC. Otherwise, **no exceptions will be considered.**

**VI. SALES TAX**

- a. This project is exempt from sales tax on materials incorporated into the project.

**VII. SPECIAL PROVISIONS**

- a. This project requires a minimum one (1) year warranty be provided for all labor and material. This is a minimum standard and additional warranty length may be required for certain specification sections.
- b. Any subcontractor performing asbestos abatement work will be required to provide Pollution Liability Insurance with a \$5 million limit naming BTC as additional insured and a waiver of subrogation will be required in addition to the requirements listed in Article VI of the attached Subcontract Agreement.



**Instructions to Proposers**

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- c. Subcontractors performing trenching shall comply with trench and shoring safety in accordance with Texas Health and Safety Code Section 756.02. Each subcontractor shall bear the cost of special engineering and shoring as required to complete the applicable scope of work.
- d. Subcontractors will be required to comply with the provisions applicable to Federally Financed and Assisted Construction, Qualified School Construction Bonds (QSCB), Qualified Zone Academy Bonds (QZAB), Davis-Bacon Act Payroll Reporting or Prevailing Wage Rate Payroll Reporting.
- e. Subcontractor shall obtain all criminal history information required by Texas Education Code Chapter 22 regarding its “covered employees”. For the purpose of bidding, all employees working on the site for more than two consecutive days are to be considered a “covered employee”. Subcontractor shall require the same of any lower tier or sub-subcontractor. In addition, subcontractor shall require all construction workers, whether the Subcontractor’s own forces, or the forces of a sub-subcontractor at any tier, to wear identification tags on the front of their persons during all times that they are on the Owner’s property. Such identification tags shall provide identification of the construction worker by a number, name and photo of person in a typeface large enough to be seen from a reasonable distance.
- f. Subcontractor shall require all workers, whether subcontractor’s own forces or the forces of a sub-subcontractor, while on the Owner’s property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using any illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interaction of any nature whatsoever with students, employees, administrators, Board Member, or parent, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for the Owner’s students or employees, BTC employees, parents and/or the general public. All areas of the campus, other than the defined construction area shall be off limits to the subcontractor’s forces, unless their work assignment requires otherwise, and specific permission has been granted by BTC. BTC will make the final determination if a subcontractor has violated this requirement and will remove any subcontractor, or subcontractor’s employee, from the site in its sole discretion. Under no circumstances shall any employee or worker of a subcontractor, sub-subcontractor, material supplier, or any other person have direct contact with a student.



**BTC Special Conditions for Proposers**

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**I. RELATED DOCUMENTS**

- a. Provisions established within the AIA Document A201 – 2007 General Conditions of the Contract for Construction, Supplemental Conditions to the A201 – 2007 General Conditions of the Contract for Construction.
- b. Proposal Package Manual prepared by BTC.
- c. Prime Contract between BTC and Castleberry ISD.
- d. All documents issued by WRA Architects, including all Project Manuals and related Construction Drawings.

**II. DESCRIPTION**

- a. Indication on the drawings or mention in the specification of articles, materials, operations, or methods requires that the Subcontractor provide each item indicated or mentioned of the quality or subject to the qualifications noted, and perform according to the conditions stated, each operation described and provide therefore all necessary labor, equipment, services and incidentals. It is the subcontractor’s responsibility to ensure all performance requirements meet or exceed those specified, or performance provided by a specified manufacturer.

**III. CONDITIONS OF THE CONTRACT**

- a. The Contract, General Conditions and Supplementary Conditions, provisions of the Subcontract Agreement, bound herewith, and the provision of this section, form a part thereof and shall govern the work under each section. Subcontractor is bound to the Contractor by the terms of the Contract Documents, including the A201 General Conditions, as amended, and assumes toward Contractor all the obligations and responsibilities that Contractor assumes toward the Owner and Architect.
- b. The Subcontractor agrees, if their bid is accepted, to commence work on or before the date established in the written “Notice to Proceed” of the Owner and in accordance with the Construction Schedule that will be developed by the Construction Manager and to fully complete the Work within the completion dates included therein. A copy of the Construction Schedule as developed by the Construction Manager will be provided.
- c. No Electrical “Hot” work will be allowed.
- d. No equipment will be allowed on the slab without written approval of the Architect and the Structural Engineer.
- e. Contracts shall be awarded based on the best value to the Owner that complies with the conditions of the proposal package, based on the selection criteria of the Construction Manager. However, BTC reserves the right to reject any and all proposals and to waive any informality



**BTC Special Conditions for Proposers**

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in proposals received whenever any such rejection or waiver is in the interests of the Owner and Construction Manager. By submitting a proposal, each offeror agrees to waive any claim it has or may have against the Owner, Architect, Construction Manager and its employees arising out of or in connection with the administration, evaluation, or recommendation of any proposer, waiver of any requirements under the submission documents, acceptance or rejection of any submission and award of a subcontract. All proposers agree that the final selection, in accordance with the established selection criteria, is subjective and as such the Construction Manager will determine the recommendation to the Owner for the selected subcontractor based on the information available and in the best interest of the Owner and the Construction Manager.

- f. Warranties, as-built drawings, O&M manuals, etc., (Close-out Documents) are considered part of the Work. No application for payment indicating the Work has reached 100% completion will be accepted until all Close-out Documents have been received, reviewed, and accepted by the Owner.

IV. COORDINATION

- a. Drawing details and other sections of these specifications covering work connected with or relating to that specified under a specific heading shall be examined for conditions which may affect that part of the work. Failure to do so will not relieve those furnishing materials and/or labor under a specific heading from supplying materials or performing work reasonably necessary to properly coordinate their work with that of other trades.

V. SUBCONTRACTOR QUALIFICATION STATEMENT

- a. **ALL SUBCONTRACTORS BIDDING THIS PROJECT MUST HAVE A CURRENT SUBCONTRACTOR QUALIFICATION STATEMENT ON FILE. THE SUBCONTRACTOR QUALIFICATION STATEMENT CAN BE COMPLETED AND SUBMITTED ELECTRONICALLY. FOR MORE INFORMATION, CONTACT HALEY ZAUN AT HZAUN@BTCBUILDS.COM.**

VI. SUBCONTRACT AGREEMENT

- a. **EACH SUCCESSFUL AND QUALIFIED SUBCONTRACTOR WILL BE REQUIRED TO EXECUTE THE SUBCONTRACT AGREEMENT INCLUDED AS PART OF THE BIDDING DOCUMENTS.**
- b. All references to “Contractor” in these documents shall be interpreted to refer to the Construction Manager.

VII. LAYING OUT OF WORK AND MEASUREMENTS

- a. **Notwithstanding any provisions to the contrary, each Subcontractor will be responsible for all field engineering and layout.**



**BTC Special Conditions for Proposers**

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- b. In all cases, figured dimensions and measurements at the site shall take precedence over scaled dimensions.
- c. One electronic/digital copy of all submittals will be required to be submitted. Submittals will need to be in .pdf format and can be submitted on CD or via email.
- d. All Subcontractors are required to be familiar with ADA/TAS requirements for accessibility. Subcontractors are required to lay-out and field verify that all work will comply with ADA/TAS requirements and notify BTC immediately, and prior to, proceeding with non-compliant Work.

**VIII. DISCREPANCIES**

- a. In case of discrepancies within the drawing, within the specifications, or between the drawings and specifications, the better quality or greater quantity, in the opinion of the Architect and Construction Manager shall be furnished and installed.

**IX. PROTECTION**

- a. Each Subcontractor shall take over and assume responsibility for the premises in the area of their work and shall provide and maintain all protections required by the governing laws, regulations, and ordinances. The Subcontractor shall be responsible for any loss or damage caused by him or his workmen to the property of the Owner or to the work or materials installed and shall make good any loss or damage or injury without cost to the Owner or Construction Manager.
- b. The protection of adjacent property shall include but will not necessarily be limited to the erection and maintenance of shoring, underpinning, and fences as necessary to protect and support existing work to be left in place.
- c. Finished floors shall be protected against damage by workmen and equipment during the performance of the work. Where materials are carried into the building, the building floors shall be covered to protect the work against dirt or grit being ground in.
- d. Trees and shrubs on the site, which do not have to be removed for the new work, shall be protected against damage. No subcontractor shall remove or trim any trees and shrubs in the area without the express approval of the Architect and Construction Manager and the proper tree removal permits.
- e. Each subcontractor shall send proper notices, make necessary arrangements, and perform other services required for the care, protection, and maintenance of the Public Utilities, including fireplugs and wires and all other items of this character on and around the building site.

**X. EROSION CONTROL**





**BTC Special Conditions for Proposers**

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- a. All subcontractors will be required to modify, repair, adjust and add to the erosion control system and the provisions of the Storm Water Pollution Prevention Plan as developed by the Construction Manager.
- b. Subcontractor may be required to execute formal compliance certification documentation with respect to the Storm Water Pollution Prevention Plan and other documentation as required to meet and satisfy the requirements of the Environmental Protection Agency and/or the local governing authorities.

**XI. EXTRAS TO THE CONTRACT**

- a. Construction Manager intends to enforce and abide by all the provisions of the Subcontract Agreement, Article V as it pertains to compensation and claims for additional work performed.

**XII. INSURANCE REQUIREMENTS**

- a. Subcontractor shall refer to the attached Subcontract Agreement, Article VI for all provisions regarding insurance requirements and limits.
- b. **Note the provisions requiring an Additional Insured endorsement and Waiver of Subrogation in favor of the Construction Manager and its employees on the General Liability portion of the required coverage and a Waiver of Subrogation in favor of the Construction Manager and its employees with regard to Workers Compensation insurance. These provisions will be strictly enforced.**
- c. **Note the specific ISO forms required.**
- d. **Note the special provisions for any contractor performing asbestos abatement work. Any subcontractor performing asbestos abatement work will be required to provide Pollution Liability Insurance with a \$5 million limit naming BTC as additional insured and a waiver of subrogation will be required in addition to the requirements listed in Article VI of the attached Subcontract Agreement.**

**XIII. JOB CLEAN-UP**

- a. In addition to the requirement and provisions of Article II, Section 2.06 of the Subcontract Agreement, subcontractors will be required to comply with the following additional provisions regarding job clean-up.
- b. It is the responsibility of the Subcontractor to clean up trash and debris occasioned by the Work done hereunder on a daily basis and as directed by the Construction Manager and will, at all times, keep the project and premises clean.



**BTC Special Conditions for Proposers**

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- c. In addition to the clean-up of your identifiable trash, the subcontractor will be required to participate in a general clean-up of the project under the direction of the Construction Manager as follows:
- d. The Construction Manager will schedule a general clean-up of the project one day each week for a duration of eight (8) hours.
- e. Each subcontractor who has worked on the project at any time during the previous week (a week is Sunday through Saturday) shall provide clean-up workers (construction workers) to be available at the time scheduled by the Construction Manager for the purpose of participating in the general clean-up of the entire project. The number of clean-up workers to be provided by the subcontractor shall be proportionate to the average number of employees for the current week.
  - i. 1-10 workers, 1 clean-up worker
  - ii. 11-20 workers, 2 clean-up workers
  - iii. 21-30 workers, 3 clean-up workers
- f. If the subcontractor has no employees on the project during the current week, he will not be required to participate in the general clean-up for that week.
- g. Each subcontractor will be responsible for the participation of its subcontractors in the general clean-up work. Each subcontractor will provide clean-up workers in the same proportionate basis as established above. Each subcontractor shall provide their clean-up worker with a shovel and broom.
- h. If, at any time, a subcontractor fails to participate as required by this section in the general clean-up of the project, removal of trash and debris as occasioned by the work done hereunder, or fails to perform other clean-up work as directed by the Construction Manager, the Construction Manager shall provide such clean-up labor and shall charge the subcontractor \$150 for each day of occurrence. In the event of such instances, the Construction Manager will notify the subcontractor and a deductive change order will be issued for the amount of the expense and this amount will be retained from the subcontractor's next application for payment.
- i. Construction Manager will supply a dumpster for the use of the subcontractors. Certain subcontractors may be responsible for the hauling of their own debris and cannot use the dumpster. This requirement will be identified in the subsequent proposal packages for that work.

**XIV. SAFETY**

- a. IT IS THE RESPONSIBILITY OF THE SUBCONTRACTOR BY FEDERAL LAW TO COMPLY WITH ALL OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS



**BTC Special Conditions for Proposers**

FOR THE CONSTRUCTION INDUSTRY (29 CFR PART 1926 WITH ALL SUBSEQUENT AMENDMENTS) AS PROMULGATED BY THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) OF THE U.S. DEPT. OF LABOR. THE CONSTRUCTION MANAGER MAY CONDUCT SAFETY INSPECTIONS. THE SUBCONTRACTOR WILL COOPERATE WITH THE CONSTRUCTION MANAGER AND OTHER SUBCONTRACTORS TO ENSURE THAT THE SITE IS MAINTAINED AS A SAFE WORK ENVIRONMENT. IT IS THE ADDITIONAL RESPONSIBILITY OF THE SUBCONTRACTOR TO ENSURE THAT ALL PERSONNEL, SUBCONTRACTORS, VENDORS, AND SUPPLIERS PERFORMING WORK ON THIS PROJECT KNOW, UNDERSTAND AND AGREE TO COMPLY WITH ALL OSHA, FEDERAL, STATE AND LOCAL PROVISIONS.

- b. SUBCONTRACTORS WILL COMPLY WITH SAFETY DIRECTIVES, IF ANY, ISSUED BY THE OWNER AND CONSTRUCTION MANAGER. EACH SUBCONTRACTOR IS FULLY RESPONSIBLE FOR ALL SAFETY MATTERS APPLICABLE OR RELATED TO SUBCONTRACTOR'S WORK. ALL SUBCONTRACTORS ON SITE ARE REQUIRED TO COMPLY WITH OSHA GENERAL DUTY CLAUSE 29 USC 654 IN ADDITION TO ANY OTHER REQUIREMENTS. THE OWNER, ARCHITECT, AND CONSTRUCTION MANAGER ASSUME NO SAFETY RESPONSIBILITIES OR OBLIGATIONS OF ANY SUBCONTRACTOR NOR ANY DUTY TO NOTIFY SUBCONTRACTOR OF ANY SAFETY ISSUE OR VIOLATION.
- c. ALL PERSONS ON SITE ARE REQUIRED TO WEAR SAFETY VESTS, HARD HATS, AND OTHER PPE AS APPROPRIATE, AS REQUIRED TO COMPLY WITH OSHA GENERAL DUTY CLAUSE 29 USC 654, AND/OR AS REQUIRED BY CONSTRUCTION MANAGER.
- d. Provide all Safety Data Sheets, bound within a 3-ring, hard cover, binder to the job site superintendent within 15 days of mobilizing on site.
- e. Subcontractors, that are on-site, are required to attend weekly safety discussions which will be scheduled in conjunction with the weekly project coordination meeting.

**XV. PAYMENT AND PERFORMANCE BONDS**

- a. Each subcontractor shall provide separate pricing in their proposals for the costs of furnishing Labor and Material Payment Bond and Performance Bonds for the project. Bonds shall be executed by a surety company acceptable to the Construction Manager. Each bond shall be an amount equal to one hundred percent (100%) of the contract price. The Performance Bond and Labor and Material Bond may be in one or separate agreements in accordance with local law and are to be delivered to the Construction Manager, if required, no later than the date of the execution of the contract.



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**BTC Special Conditions for Proposers**

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- b. Only those surety companies listed as approved on the Department of Treasury’s Listing of Approved Sureties and authorized to do business in the State of Texas will be considered as acceptable sureties.
- c. The Surety shall have the following minimum requirements: Best’s Rating of B+ to B++ and a Financial Size Category listing of no lower than IX (9), or, Best’s Rating of A- to A++ and a Financial Size Category listing of no lower than IV (4). Bonds shall be executed and approved by Contractor prior to beginning work.
- d. If any bond is in excess of ten percent (10%) of the surety’s capital and surplus, the bond will not be accepted unless, as a condition to acceptance of the bond, the surety delivers to the Construction Manager written certification that the surety has reinsured the risk that exceeds ten percent (10%) of the surety’s capital and surplus with a duly authorized, accredited, or trusted reinsurer. The amount reinsured by such reinsurer shall not exceed ten percent (10%) of the reinsurer’s capital and surplus. Further, the surety shall deliver to the Construction Manager a copy of the reinsurance agreement, which must adequately assure the Construction Manager, as a condition of acceptance, that such risks have been adequately reinsured in accordance with the accepted industry practices.

**XVI. WAGE RATES**

- a. Subcontractor shall comply with all wage rate requirements as set forth in the prevailing wage rate schedule in the Contract Documents.



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**Advertisement**

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## Request for Competitive Proposals

As Construction Manager for Castleberry ISD, BTC will be receiving competitive proposals from trade contractors for Castleberry ISD High School Addition on October 2, 2024.

Competitive proposals will be received by BTC until 2:00 p.m., (local time) on Wednesday, October 2, 2024, via email to [estimating@btcbuilds.com](mailto:estimating@btcbuilds.com). Proposals will **NOT** be received after 2:00 p.m.

The complete bidding documents for this project will be available in electronic, downloadable format for subcontractor and supplier use in preparing proposals for this project via SmartBidNet. Access to the bidding documents will be available through a link on the BTC website “[www.btcbuilds.com](http://www.btcbuilds.com)” following the instructions under the “bidding” tab.

The Proposal Package Manual detailing specific work required and contractual obligations will be available with the bidding documents. BTC is not responsible for partial or incorrect information obtained from other bidding websites or plans rooms. Addenda will be posted on the SmartBidNet website only and registered proposers will receive a notification when addenda are posted. It is the responsibility of the proposers to obtain all the addenda.

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**THIS DOCUMENT IS A SAMPLE ONLY**  
**ALL BTC PREQUALIFICATIONS ARE HANDLED THROUGH SMARTBID**  
**PLEASE CONTACT HALEY ZAUN TO BECOME PREQUALIFIED OR TO UPDATE AN**  
**EXISTING PREQUALIFICATION**  
**SUBCONTRACTORS ARE REQUIRED TO PREQUALIFY EVERY 24 MONTHS**  
**HZAUN@BTCBUILDS.COM**  
**817-467-4981**

**BTC**

**Construction Managers**

This Document was prepared solely by BTC

**Subcontractor's Qualification Statement**

The Undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

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

Submitted by: \_\_\_\_\_

E-Mail: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

1. Specifically, what type of work does your organization perform? Please check all packages that apply.

INDEX					
Check all that apply	PROPOSAL PACKAGE	SCOPE OF WORK	Check all that apply	PROPOSAL PACKAGE	SCOPE OF WORK
	00A	Plant Rooms		10H.05	Entrance Mats
	01	Final Cleaning		10H.06	Fire Extinguishers
	01B	Indoor Air Quality		10H.07	Flagpoles/Flags
	01C	Close-Outs		10H.08	Headwalls (Hospital)
	02A	Demolition		10H.09	Kalwall
	02B	Pre-Build Control		10H.10	Kilns
	03A	Concrete		10H.11	Mailboxes
	03B	Sealed/Stained Floors		10H.12	Site Furnishings
	03C	Insulating Concrete Forms (ICF)		10H.13	Tubs & Pools
	03D	Gyp Crete Underlayment		10H.14	Pallet Racks
	04A	Masonry		11A	Food Service Equipment
	05A.1	Structural Steel Fabricator		11B	Residential Appliances

05A.2	Structural Steel Erector	11C	Gymnasium Equipment
05B	Decorative Railings	11D	Stage Equipment/Curtains
05C	Platform Scaffolding	11E	Scoreboards
06A	Millwork/Finish Carpentry	11F	Athletic Field Equipment
06B	Rough Carpentry (includes Laminate Beams)	11G	Projection Screens
06C	Plastic Laminate Wall Panels	11H	Paint Spray Booth
06D	Wood Framing	12A	Window Blinds
06E	Residential Casework	12B	Laboratory Casework
07A	Roofing and Metal Wall Panels	12C	Fixed Auditorium Seating
07A.1	Lightweight Insulating Concrete Roof Deck	12D	Fixed Gymnasium Seating
07A.2	Roof Accessories	12E	Telescoping Stands
07B	Thermal and Moisture Protection	12F	Lecture Seating
07C	Sprayed-On Fireproofing	12G	Musical Instrument Storage Cabinets
07D	Expansion Joint Assemblies	12H	Library Shelving/Equipment
07E	Composite Metal Wall Panels	13A	Pre-Engineered Metal Building
07F	Thermal Insulation	13B	Bleachers/Press Box/Band Tower
08A	Glass and Glazing	13C	Sound Conditioned Rooms
08B	Overhead Doors/Dock Equipment	13D	Greenhouses
08C	Doors, Frames and Hardware	14A	Elevators
08D	Door Installation	14B	Wheelchair Lifts
08E	Specialty Entrances	14C	Laundry/Trash Chutes
09A	Drywall/Acoustical	21A	Fire Suppression
09B	Ceramic Tile	22A	Plumbing
09C	Carpet/Resilient Flooring	23A	HVAC
09C.1	Finished Floor Protection	23B	HVAC Test and Balance
09D	Painting	26A	Electrical
09E	Resinous Flooring	27A	Communication Cabling
09F	Wood Athletic Flooring	27B	Sound and Program Systems
09G	Terrazzo	28A	Access Control System
09H	Resilient Athletic Flooring	28B	Fire Alarm System
09I	Acoustic Room Components	31A	Earthwork
09J	Plaster/EIFS	31B	Termite Control
09K	Access Flooring	32A	Tennis Courts
10A	Toilet Partitions/Accessories	32B	Segmental Retaining Wall System
10B	Visual Display Boards	32C	Landscape/Irrigation
10C	Lockers/Wire Mesh Partitions/Metal Shelving	32D	Athletic Fields
10D	Signage	32E	Pavement Markings
10E	Walkway Covers	32F	Fencing
10F	Folding Partitions	32G	Asphalt Paving

	10G	Display Cases		32H	Playground Equipment and Structures
	10H.01	Arts & Craft Equipment		32I	Unit Pavers
	10H.02	Ballet Barres		33A	Site Utilities
	10H.03	Comer Guards			
	10H.04	Cubical Curtains			

Please list any that do not fall in the above packages: \_\_\_\_\_

2. What is your annual volume for the previous three years?

Year \_\_\_\_\_  0-50K  50-100K  100-500K  500K+

Year \_\_\_\_\_  0-50K  50-100K  100-500K  500K+

Year \_\_\_\_\_  0-50K  50-100K  100-500K  500K+

3. How many years has your organization been in business under its present business name? \_\_\_\_\_

4. Under what other or former names has your organization operated?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. Do you operate as a Corporation? \_\_\_\_\_

If yes, date of Incorporation: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

If not, what type of Organization: \_\_\_\_\_

Officers, Principals and Partners.

Name	Title	Address	Phone

SAMPLE ONLY - DO NOT USE



6. Are you a Certified Minority Organization?  YES  NO  
 If yes, list the Certification number(s), Expiration date(s) and the Agency that issued below.

Certification	Cert. #	Exp. date	Agency
DBE (Disadvantaged Business Enterprises)			
DVBE (Disabled Veteran Owned Business Enterprise)			
ESB (Emerging Small Business)			
FED HUB ZONE (Federal HUB Zone Certification)			
FED SB (Federal Small Business)			
FED SBA 8A (Federal SBA 8a Certification)			
FED SDB (Federal Small Disadvantaged Business)			
FED SDVOB (Federal Service Disabled Veteran Owned Business)			
FED VOSB (Federal Veteran Owned Small Business)			
FED WOSB (Federal Woman Owned Small Business)			
MBE (Minority Owned Business)			
NONE (None)			
OTHER (Other)			
SBA 8(a) (Small Business 8(a) Business Development)			
SBE (Small Business)			
SDVOB (Service-Disabled Veteran-Owned Business)			
SDVOSB (Service-Disabled Veteran-Owned Small Business)			
SMBE (Small Minority Business Enterprise)			
SWBE (Small Woman Business Enterprise)			
VOB (Veteran Owned Business)			
VOSB (Veteran Owned Small Business)			
WBE (Woman Owned Business)			
WOSB (Women-Owned Small Business)			

7. Does your organization currently have in force, the following insurance coverage?  YES  NO

*INSERT CERTIFICATE OF LIABILITY INSURANCE*

**Note: Please return most recent certificate of insurance, indicating current coverage of above, and insurance company rating(s) as noted, with completed qualification statement.**

8. What percentage of work do you normally perform with your own forces?  %

8A. Number of Executive Management?

8B. Number of Licensed/Certified Field Managers for your Trade? (E.g. Licensed Electrical, Master Plumber, etc.)

8C. Number of Laborers?

9. Have you failed to complete any work awarded to you?

If so, note when, where and why:

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10. Within the last five years, has any officer or partner of your organization ever been an officer or partner of another organization when it failed to complete a construction contract?  YES  NO

11. List the construction experience of the Executive Management of your organization:  
(Attach additional pages if necessary.)

Individual's Name:	
Present Position or Office:	
Magnitude and Type of Work:	
Individual's E-mail:	
Years of Construction Experience:	
In What Capacity:	

Individual's Name:	
Present Position or Office:	
Magnitude and Type of Work:	
Individual's E-mail:	
Years of Construction Experience:	
In What Capacity:	

Individual's Name:	
Present Position or Office:	
Magnitude and Type of Work:	
Individual's E-mail:	
Years of Construction Experience:	
In What Capacity:	

Individual's Name:	
Present Position or Office:	
Magnitude and Type of Work:	
Individual's E-mail:	
Years of Construction Experience:	
In What Capacity:	

- 11A. List the names of the Estimators:


- 11B. List the names of the Project Managers:


- 11C. List the names of the Field Superintendents and any certifications they have:


11D. Provide the name of the Safety Director, their level of experience and any certifications; or individual responsible to develop and implement your Company Safety Plan:


11E. Current WC Experience Modifier Rate (Your insurance agent can give you your EMR #)


12. List ALL reportable accidents over the past (5) five years.


13. List ALL owned major equipment (valued over \$100,000).


14. List ALL major construction projects your organization has in progress: (List ALL projects you have been awarded and not been paid retainage).

Project Name:			
Description of Work Contracted:			
Contract with (Name and Address)			
Individual to Contact (Name, Title, Phone and E-mail:			
Contract Amount:		Percent Complete:	
Schedule Completion			

Project Name:			
Description of Work Contracted:			
Contract with (Name and Address)			
Individual to Contact (Name, Title, Phone and E-mail:			
Contract Amount:		Percent Complete:	
Schedule Completion			

Project Name:			
Description of Work Contracted:			
Contract with (Name and Address)			
Individual to Contact (Name, Title, Phone and E-mail:			
Contract Amount:		Percent Complete:	
Schedule Completion			

SAMPLE ONLY - DO NOT USE

Project Name:	
Description of Work Contracted:	
Contract with (Name and Address)	
Individual to Contact (Name, Title, Phone and E-mail):	
Contract Amount:	Percent Complete:
Schedule Completion	

Project Name:	
Description of Work Contracted:	
Contract with (Name and Address)	
Individual to Contact (Name, Title, Phone and E-mail):	
Contract Amount:	Percent Complete:
Schedule Completion	

15. List ALL the major projects your organization has completed in the past three years:

Project Name:	
Description of Work Contracted:	
Contract with (Name and Address)	
Individual to Contact (Name, Title, Phone and E-mail):	
Contract Amount:	Percent Complete:
Percent of work performed with your own force:	

Project Name:	
Description of Work Contracted:	
Contract with (Name and Address)	
Individual to Contact (Name, Title, Phone and E-mail):	
Contract Amount:	Percent Complete:
Percent of work performed with your own force:	

Project Name:	
Description of Work Contracted:	
Contract with (Name and Address)	
Individual to Contact (Name, Title, Phone and E-mail):	
Contract Amount:	Percent Complete:
Percent of work performed with your own force:	

Project Name:	
Description of Work Contracted:	
Contract with (Name and Address)	

SAMPLE ONLY - DO NOT USE

Individual to Contact (Name, Title, Phone and E-mail):			
Contract Amount:		Percent Complete:	
Percent of work performed with your own force:			

Project Name:			
Description of Work Contracted:			
Contract with (Name and Address)			
Individual to Contact (Name, Title, Phone and E-mail):			
Contract Amount:		Percent Complete:	
Percent of work performed with your own force:			

16. Trade References:

Name	Address	Individual to Contact (Name, Title and E-mail)	Phone

Bank References:

Name	Address	Individual to Contact (Name, Title and E-mail)	Phone

Bonding Company:

Name	Address	Individual to Contact (Name, Title and E-mail)	Phone

17. Bonding capacity and current amount under bond? \_\_\_\_\_

18. Submit a financial statement, audited if available, including latest balance sheet and income statement showing the following items: *(E-mail directly to Keith Ruffner @ KRuffner@btcbuilds.com)*

- A. Current Assets (e.g. cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses.
- B. Net Fixed Assets.
- C. Other Assets.
- D. Current Liabilities (e.g. accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries, and accrued payroll taxes.)
- E. Other Liabilities (e.g. capital, capital stock authorized and outstanding shares par values, earned surplus, and retained earnings.
- F. Name of firm preparing financial statement and date thereof.

Is this financial statement for the identical organization named on page one?  YES  NO

If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g. parent-subsidiary) \_\_\_\_\_

Dated at \_\_\_\_\_ AM/PM this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

**SAMPLE ONLY - DO NOT USE**

# AIA<sup>®</sup> Document A133<sup>®</sup> – 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 Fifth day of December in the year Two Thousand Twenty Three  
*(In words, indicate day, month, and year.)*

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

Castleberry Independent School District  
5228 Ohio Garden Road  
Fort Worth, Texas 76114

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

BTC  
1450 N. Jim Wright Freeway  
White Settlement, Texas 76108

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

Addition and Renovation to Castleberry High School

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

WRA Architects Inc.  
12377 Merit Dr.  
Suite 1800  
Dallas, Texas 75251

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<sup>™</sup>-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.

**TABLE OF ARTICLES**

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

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT (if executed)**

**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.)*

To be determined

§ 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.)*

To be determined

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

\$68,000,000



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

.1 Design phase milestone dates, if any:

To be determined

.2 Construction commencement date:

To be determined

.3 Substantial Completion date or dates:

.4 Other milestone dates:

N/A

*(Paragraphs deleted)*

§ 1.1.7 Other Project information:

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

None

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

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

Superintendent or designee(s)

§ 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.)*

Owner's Superintendent or designee(s).

*(Paragraphs deleted)*

§ 1.1.11 The Architect's representative:

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

Mr. Derrick York, AIA, Partner  
WRA Architects Inc.  
12377 Merit Dr.  
Suite 1800  
Dallas, Texas 75251  
Telephone: 214-533-4274  
Email: [dyork@wraarchitects.com](mailto:dyork@wraarchitects.com)

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

Sammy C. Martin  
BTC  
1450 N. Jim Wright Freeway  
White Settlement, Texas 76108  
Telephone: 817-467-4981  
Email: [samartin@btcbuilds.com](mailto:samartin@btcbuilds.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.)*

None

*(Paragraphs deleted)*

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

None

*(Paragraph deleted)*

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, the A201 General Conditions specifically referenced herein, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Owner shall be entitled to rely on the information provided by Construction Manager in connection with the Construction Manager's construction administration and management services. Under no circumstances will the Construction Manager services include the performance of duties involving the practice of architecture or engineering. 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.

### § 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 as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 as amended 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 as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 as amended 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 provide complete and accurate schedules and estimates. 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. Except as required by the Construction Manager's duty to exercise reasonable care or by any part of the Contract Documents, 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 in writing any nonconformity discovered by or made known to the Construction Manager and also 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; 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. The Construction Manager shall also review and 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.

*(Paragraph deleted)*

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations in writing to the Owner and Architect.

#### **§ 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, availability of labor and materials, time of performance, 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.

### **§ 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 written estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 Prior to the commencement of the Schematic Design, Design Development and Construction Documents phases, the Construction Manager shall prepare and submit for the Architect's review and Owner's written approval a written project schedule and written 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 Construction Manager shall inform the Owner and Architect in writing in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, describe the reasons therefor, and make written recommendations for corrective action.

§ 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 written recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

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

*(Paragraph deleted)*

### **§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 The Construction Manager shall develop bidders' 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 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.

### **§ 3.1.12 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, then, upon the establishment of the Guaranteed Maximum Price, the Owner may elect to assign all contracts for these items to the Construction Manager and the Construction Manager shall accept responsibility for them.

### **§ 3.1.13 Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes (including, but not limited to, building and fire codes), rules and regulations, Owner's policies, and all applicable law 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 and prior to advertising or solicitation of sub-contract proposals, 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 Contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

§ 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; the clarifications and assumptions shall not delete or mitigate in any way any of the Construction Manager's duties or the Owner's rights under this Agreement and the applicable A201 General Conditions and shall not be treated as an amendment of this Agreement or the applicable A201 General Conditions; additionally, the Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the proposed assumptions and clarifications contained in the Guaranteed Maximum Price Proposal and the Contract Documents;
- .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; and the Construction Manager's Fee; and
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

§ 3.2.3.5 If the Construction Manager includes in its Guaranteed Maximum Price proposal any terms, whether in the Assumptions and Clarifications or in any attachment or requirement of the Guaranteed Maximum Price proposal, which purport to modify the duties, rights, or privileges of either Party under this Agreement or the A201 General Conditions as amended, or otherwise require such a modification, the Construction Manager must: (1) list with each proposed term the section or sections of this Agreement or the A201 General Conditions that would be modified by the proposed term, and (2) provide notice to the Owner in a separate written letter that (a) the Construction Manager proposes to modify the terms of this Agreement and/or the A201 General Conditions through the Guaranteed Maximum Price proposal, and (b) the Owner should have its legal counsel review the proposed changes prior to the Owner's acceptance of the Guaranteed Maximum Price proposal.

If the Construction Manager does not comply with the requirements of this Section 3.2.3.5, the Owner shall be entitled to accept the pricing provided by the Construction Manager in its Guaranteed Maximum Price proposal without modification to this Agreement or the A201 General Conditions. Failure to notify the Owner under this section shall be considered a breach of the Construction Manager's fiduciary duty to the Owner.

Furthermore, the Owner's acceptance of a Guaranteed Maximum Price proposal does not obligate the Owner to make any modifications to this Agreement or A201 General Conditions nor entitle the Construction Manager to rely on the proposed modifications unless they have been incorporated into the Guaranteed Maximum Price Amendment executed by the Parties with specific reference to this Section 3.2.3.5 and the section or sections affected by the modification.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a separately-identified "Construction Contingency" for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. 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. Notwithstanding anything in this section, use of the Construction Manager's Contingency is prohibited if (1) the proposed expenditure arises from the negligence or other fault of the Construction Manager, a subcontractor, or anyone else for whom the Construction Manager is responsible; or (2) the proposed expenditure is not reimbursable as a Cost of the Work or is otherwise disallowed under the Contract Documents.

§ 3.2.4.1 The Guaranteed Maximum Price proposal may 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 sole discretion of Owner. Any unused Owner's Contingency shall accrue to the Owner. Construction Manager has no contractual right to require that Owner make any expenditure from the Owner's Contingency.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. 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. However, such review by Owner and Architect is not a guarantee or warranty of the accuracy of the Guaranteed Maximum Price.

§ 3.2.6 The Owner's Board of Trustees shall be allowed not less than 30 days to consider the Guaranteed Maximum Price Proposal. 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, the Specifications, Drawings, and other Contract Documents, and the required date for Substantial Completion. Owner retains the absolute right not to accept any Guaranteed Maximum Price proposal and otherwise to elect not to proceed to the construction phase under this Agreement.

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

§ 3.2.8 The Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes for which the Owner is exempt under Texas law.

### § 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.

§ 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.

§ 3.3.1.3 Construction Manager shall not perform any portions of the Work unless (1) such services are for supervisory or administrative personnel described in Section 7.2, (2) such services are described in Sections 7.5, 7.6, or 7.7, or (3) it has been awarded such portion in accordance with the same procedures imposed upon all other trade contractors, and then, only if the Owner has determined that the Construction Manager's bid or proposal provides the best value for the Owner.

**§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct weekly or otherwise regularly scheduled meetings with the Owner, Architect, and appropriate subcontractors 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** Promptly upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect an updated construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017 (as amended), including 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 throughout the course of the Work, 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 in writing 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, upon written request of the Construction Manager, shall provide to the Construction Manager or shall ask the Architect or other appropriate consultant to provide to the Construction Manager, as soon as practically possible, such information in its possession or in the possession of the Architect or other consultant regarding the requirements of the Project, the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements, when such information is required in order for the Construction Manager to fulfill its responsibilities under this Agreement.

*(Paragraph 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.

**§ 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 test, surveys, and reports are provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager's use of the information at its own risk and Construction Manager 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 exercise reasonable care 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 as otherwise agreed to by the parties in writing, 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 when such services are requested by the Construction Manager in writing and such services are reasonably required to complete the Project in a manner consistent with good workmanship. 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.

**§ 4.1.4.3** The Owner, when such services are requested in writing by the Construction Manager and such services are reasonably required to complete the Project in a manner consistent with good workmanship, 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 upon written request by the Construction Manager. 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.

*(Paragraph deleted)*

**§ 4.2 Owner's Designated Representative**

The Owner may identify a representative authorized to act on behalf of the Owner with respect to the Project to the extent permitted by law and Owner's board policy and to the extent authorized by formal action by the Board of Trustees. The Owner's representative, if one is formally designated, 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, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative, if any. The Owner's Board of Trustees retains final approval authority over all Change Orders.

*(Paragraphs deleted)*

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

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

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

*(Paragraphs deleted)*

*(Table deleted)*



*(Paragraphs deleted)*

## **§ 5.2 Payments**

**§ 5.2.1** Payments shall be made following the Construction Manager's presentation of an Application for Payment and approval and certification by the Architect of such application (or of a portion of such Application), subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment. Construction Manager's Applications for Payment must be proportional to services actually performed.

**§ 5.2.2** Payments are due and payable as provided by law.

**§ 5.2.3** The obligations of the Construction Manager under Article 10 shall apply to the Preconstruction Phase services. Each monthly invoice shall be supported by appropriate documentation, and the Construction manager shall supply such evidence as Owner or Architect may reasonably require to substantiate the compensation claimed.

## **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.

**§ 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.)*

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

None.

**§ 6.1.4** Limitations, if any, on a subcontractor's overhead and profit for increases in the cost of its portion of the Work that are included in a Change Order or Construction Change Directive:

Overhead and profit shall not exceed 10% of the cost increase reflected in the Change Order or Construction Change Directive.

**§ 6.1.5** The Construction Manager, along with the Guaranteed Maximum Price Proposal, shall submit its rental rates for Construction Manager-owned equipment. Compensation for these items shall not exceed the lower of (1) the standard rate paid at the place of the Project, or (2) the rates provided in the Guaranteed Maximum Price Proposal.

**§ 6.1.6** Liquidated damages, if any:

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

Owner and Construction Manager recognize that time is of the essence in the Agreement and that the Owner will suffer financial loss if the Work is not completed within the time specified in the Guaranteed Maximum Price Amendment. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the Owner if the Work is not completed within such time.

Accordingly, in the event the Construction Manager fails to achieve Substantial Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$1,500 per day until the Work is substantially completed. In the event the Construction Manager fails to achieve Final Completion of the Work by the agreed date, the Owner shall be entitled to liquidated damages in the amount of \$500 per day until the Work is finally completed. In the event that the parties establish multiple required dates of Substantial Completion, these liquidated damages provisions apply independently to each required date of Substantial Completion and Final Completion. Unless the Guaranteed Maximum Price Amendment explicitly states otherwise, the Construction Manager shall achieve final completion of the Project no later than thirty (30) days from the date Substantial Completion.

It is expressly understood that these amounts are agreed upon as a fair estimate of the pecuniary damages that the Owner will incur if the Work is not completed within the agreed time. These amounts shall be considered as liquidated damages only, the exact ascertainment of which is difficult, and in no sense shall be considered a penalty.

The parties agree that the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines are difficult to estimate. Each party represents that, as of the date of this Agreement, it believes the liquidated damages identified in this section to be a reasonable estimate of the damages that the Owner would suffer due to the Construction Manager's failure to meet the necessary timelines, and the Construction Manager acknowledges that such representation on its part is a substantial inducement to Owner's agreement with the terms of this Agreement.

The parties agree that the Owner may withhold any accrued liquidated damages at any time and from any payment that otherwise may be due to the Construction Manager. The parties further agree that the sum of all liquidated damages under this section shall also be deemed a credit against amounts owed by Owner to Construction Manager.

**§ 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.)*

If the Construction Manager completes the performance of the Work for less than the Guaranteed Maximum Price, the difference between (i) the total aggregate sum of the actual Cost of the Work plus the Construction Manager's fee plus the Construction Manager's General Conditions Cost and (ii) the Guaranteed Maximum Price shall inure in its entirety to the Owner's benefit.

**§ 6.1.8 Construction Manager's General Conditions Cost**

**§ 6.1.8.2** The Construction Manager shall be entitled to an equitable adjustment to the Construction Manager's General Conditions Cost for:

1. Additional time related General Conditions Cost (i.e. project manager, superintendence, office trailer, etc.) for Modifications, as defined in Section 1.1.1 of the AIA A201-2017, increasing the Contract Time; and;
2. Additional time related General Conditions Cost (i.e. project manager, superintendence, office trailer, etc.) incurred by Construction Manager as a result of delays or suspensions for which an increase in the Contract Time is permitted by the Contract Document.

**§ 6.1.8.3** Notwithstanding anything in Article 6 to the contrary, no cost for any of the items included in the Construction Manager's General Conditions Cost, as enumerate in Section 6.1.8.1 above, shall be included in, or reimbursed as a part of, the Costs of the Work under any other provision of the Contract Documents, it being the intention of the Parties that all such costs included in the Construction Manager's General Conditions Cost shall be reimbursed by payment of the fixed amounts as set forth in Section 6.1.8.1 above, subject to adjustments thereto as provided in Section 6.1.8.2 above.

**§ 6.1.8.4** Amounts received by the Construction Manager as progress payments for Construction Manager's General Conditions Cost shall be deemed to be equal to the Construction Manager's cash disbursements for Construction Manager's General Conditions Cost for purpose of Section 11.1.4, it being the express intention of the Parties that the Construction Manager is not required to provide evidence of cash disbursements equaling the Construction Manager's General Conditions Cost.

§ 6.1.8.5 The Project Manager and Assistant Project Manager will not be stationed at the Job Site 100% of the time. The Project Manager and Assistant Project Manager will be onsite no less than once per week and more often as required. The General Conditions costs identified in Article 6.1.8 are applicable whether the Project Manager and Assistant Project Manager are on site or at the principal office of the Construction Manager.

## § 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. 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.

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

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

§ 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 amended, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 as amended 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 In the case of changes in the Work, the Construction Manager's Fee will be adjusted as provided for in Section 6.1.3, if the Construction Manager, Owner, and Architect agree that the scope of services has changed significantly. If, however, these parties cannot agree that the scope of services has changed significantly, the Construction Manager's Fee shall not be adjusted.

## 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. If Construction Manager fails to do so, it waives any right to reimbursement of such costs. The parties shall endeavor to identify any such costs prior to executing the 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 written approval of the Owner.

§ 7.1.4 The Cost of Work shall not include costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or of any subcontractor. All cost items qualifying for reimbursement under this Article 7 as included in the Cost of the Work shall be included in the Guaranteed Maximum Price.

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops.

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

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

None.

§ 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 payroll taxes, but not any taxes for which the Owner is exempt by virtue of its status as a governmental entity, insurance as required by the Contract Documents, 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 not increase 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, 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 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 written 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 necessary for the performance of the Work.

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

**§ 7.6 Miscellaneous Costs**

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

*(Paragraphs deleted)*

§ 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.

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

*(Paragraphs deleted)*

§ 7.6.7 Reasonable costs of document reproductions and delivery charges.

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

*(Paragraphs deleted)*

**§ 7.7 Other Costs and Emergencies**

*(Paragraph deleted)*

§ 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.

*(Paragraph deleted)*

§ 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.

**§ 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 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;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any subcontractor or vendor;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Costs incurred because of the negligence, breach of contract, or other misconduct of the Construction Manager or any subcontractor;
- .11 Delay damages or claims, including but not limited to acceleration costs; and
- .12 Storage costs, unless with prior written approval of the Owner.

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

**§ 8.1** Cash discounts, trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

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

**§ 9.1** 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 Construction Manager may also seek to perform portion of the Work itself if: (i) the Construction Manager submits its bid or proposal for those portions of the Work in the same manner as all other Subcontractors; and (ii) the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner. 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; (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, and (4) offers the best value to the Owner, then the Construction Manager may request 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.

§ 9.3 The Construction Manager shall include the following specific notices in the information to proposers, along with any other notices required by law:

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

#### ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Project, 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 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 eight (8) years after final payment, or for such longer period as may be required by law.

All records shall be maintained in accordance with generally accepted accounting principles and procedures, consistently applied. Subcontractors retained by the Construction Manager on a cost-plus basis shall have the same obligations to retain records and cooperate with audits as are required of the Construction Manager under this Article 10.

#### 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, subject to Owner's right to request a rescission or amendment of the Architect's certification, and further subject to any right Owner may have under the Contract Documents to withhold or otherwise reduce payment.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 The Architect will, within seven days after receipt of the Construction Manager's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Paragraph 9.5 of the AIA Document A201-2017, as amended by the parties. Owner shall make payment for amounts properly due pursuant to the requirements of the law. Notwithstanding such certification for payment by the Architect however, Owner shall be entitled to withhold payment to such extent as may be necessary in the Owner's opinion, reasonably supported, to protect the Owner from loss for which the Construction Manager is responsible, including loss of the reasons listed in 9.5.1 of the AIA Document A201-2017, as amended. Such withholding of such payment by owner shall not be deemed a breach of the Contract Documents nor a failure to make timely payment.

§ 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

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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. Additionally, with each Application for Payment, the Construction Manager shall submit a "buyout report" that accurately reflects the status (including monetary amounts) of all contracts entered into by the Construction Manager for performance 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 shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

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

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified;
- .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; and
- .5 The Construction Manager's General Conditions Cost, 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 Sections 6.1.8.1 and 6.1.8.2 or, if the Construction Manager's Fee is stated as a fixed sum in those Sections, an amount that bears the same ratio to those fixed-sums 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 as amended;
- .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 in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8; and
- .7 Liquidated damages as provided in this Agreement, except that Owner may elect to subtract such amounts from any subsequent pay application.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5%)

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

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

None.

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be 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.)*

None.

*(Paragraphs deleted)*

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

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In submitting the Construction Manager’s Applications for Payment the Construction Manager shall be responsible for all errors and omissions.

**§ 11.1.13** 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.

**§ 11.2 Final Payment**

**§ 11.2.1** Final payment shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, as amended, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner’s auditors or other personnel; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2 and approved by the Owner.

§ 11.2.2 Within 30 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. It is the Construction Manager's responsibility to ensure that the final accounting it submits is full and complete. Owner may deduct from any payment otherwise owed to Construction Manager any amount that Owner or Owner's auditor determines is not supported by the Construction Manager's final accounting. Additionally, any amount paid by the Owner in excess of that required by this Agreement shall be, at Owner's election, either withheld from any payment otherwise due to Construction Manager, or returned by Construction Manager within seven days of the date Construction Manager becomes aware of such overpayment.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 30 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 as amended. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017 as amended. 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 agents or representatives of the Owner's 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, as amended. 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 or other agents or representatives of the Owner becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall, subject to all of the Owner's rights to withhold payment or otherwise deduct amounts, 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 otherwise allowed by law.

*(Paragraph deleted)*

**§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear interest

*(Paragraphs deleted)*

as provided by law.

**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, as amended. The Claims process set forth in this Article 12 and in Article 15 of the applicable A201 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017

*(Paragraphs deleted)*

as amended.

**§ 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.)*

[ ] N/A

Litigation in a court of competent jurisdiction, subject to any other requirements that may need to be satisfied prior to the commencement of litigation.

N/A

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.

### § 12.3. Contractual Adjudication Procedure for all Claims and Disputes

.1 The requirements of this Section 12.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

.2 **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Construction Manager has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Construction Manager. In the case of any such claim, dispute, or other matter, by the Construction Manager against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Construction Manager may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A-1. The Construction Manager's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 12, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Construction Manager's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Construction Manager first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Construction Manager fails to meet this timeline, the Construction Manager will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.

b. Construction Manager agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 12.3, Construction Manager must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Construction Manager as part of its complaint under GF (LOCAL) is waived by the Construction Manager and may not be asserted in any subsequent proceeding against the Owner.

c. The following are each an independent condition precedent to the institution of civil proceedings by the Construction Manager against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in this Agreement and the applicable A201, 3) a written demand by the Construction Manager for mediation, and 4) good faith and full participation in the mediation process.

d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Construction Manager's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Construction Manager of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement

discussions shall not be construed as a waiver of any failure by Construction Manager to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

## **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, for the Owner's convenience and without cause

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, solely as provided in Article 5, and shall have no other recovery. 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 compensated for Preconstruction Phase services. 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 pursuant to a written agreed-upon Work Authorization Amendment, 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 performed by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services;
- .4** Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents; and
- .5** Add the Construction Manager's General Conditions Cost computed upon the Cost of the Work to the date of termination at the rate stated in Sections 6.1.8 or, if the Construction Manager's Fee is stated as a fixed sum in those Sections, an amount that bears the same ratio to those fixed-sum amounts 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.

**§ 13.1.6** The Owner shall also pay the Construction Manager, 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

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constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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

### § 13.2.1 Termination

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

### § 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's Fee is stated as a fixed sum in that section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017; and
- .5 Credit Owner for claims, credits, offsets, and deductions to which the Owner is entitled under the Contract Documents.

§ 13.2.2.2 The Owner shall also pay the Construction Manager, 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.)*

None.

## § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as amended. 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. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017 as amended, 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.

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§ 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.

**§ 14.3 Insurance and Bonds**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2017, as amended.

The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

**§ 14.5 Other provisions:**

**§ 14.5.1 The right to the recovery of attorney's fees available under Texas Local Government Code Chapter 271, Subchapter I is hereby waived.**

**§14.5.2** Prior to releasing monthly payments to subcontractors, the Construction Manager shall call the suppliers of each subcontractor to determine if any of the subcontractors have an outstanding balance with a supplier. In the event that a subcontractor has an outstanding balance with a supplier, the Construction Manager shall joint check such outstanding balance and receive a release from the supplier.

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

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

**§ 14.5.5** Construction Manager shall require all construction workers, whether Construction Manager's own forces or the forces of Construction Manager's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner's sole expense.

**§ 14.5.6** Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

**§ 14.5.7** 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."

**§ 14.5.8** Construction Manager 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

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Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically required by law.

**§ 14.5.9** This Agreement is subject to all applicable federal and state laws, rules, and regulations.

**§ 14.5.10** This Section 14.5.10 only applies if Construction Manager has more than 10 full time employees and the Agreement is valued at \$100,000 or more. By executing this Agreement, Construction Manager verifies the following:

- .1 as required by Texas Government Code 2270.002: Construction Manager verifies that it does not boycott Israel and will not boycott Israel during the term of this contract.
- .2 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.
- .3 as required by Texas Government Code 2274.002, Construction Manager verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract.

**§ 14.5.11.** The Construction Manager agrees and stipulates that the unpaid portion of the Contract Sum (up to the Guaranteed Maximum Price established in the GMP Amendment and as subject to modification by means of a Modification as defined in the A201 General Conditions applicable to the Project), is the absolute maximum amount that could ever possibly be due and owing under this Agreement from Owner to Construction Manager. The Construction Manager hereby waives any claim against Owner for any amount in excess of the amount stipulated in this Section 14.5.11. The Construction Manager's agreement, stipulation, and waiver under this section are each a material inducement to Owner's agreement.

#### **§ 14.6 Contracting Information**

**§ 14.6.1** This Section 14.6 applies only if, per Texas Government Code §552.371(a), (1) the Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or (2) the Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the Owner in a fiscal year of the Owner.

**§ 14.6.2** Pursuant to Texas Government Code §552.372, the Construction Manager must:

- (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract;
- (2) promptly provide to the Owner any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and
- (3) on completion of the contract, either:
  - (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or
  - (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

**§ 14.6.3** The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor or vendor agrees that the contract can be terminated if the Contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

**§ 14.6.4** "Contracting information" is defined by Texas Government Code §552.003(7) and means the following information maintained by a governmental body or sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor:

- (A) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body;
- (B) solicitation or bid documents relating to a contract with a governmental body;
- (C) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract;
- (D) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and

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(E) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.

§ 14.7 The Construction Manager shall not execute a contract with any subcontractor that contains an agreement or provision to arbitrate claims. In the event that a subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Construction Manager shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 14.8 Construction Manager agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid or proposal; waiver of any requirements under the procurement documents related to this Project; the Contract Documents; acceptance or rejection of any bids or proposals; and award of the Contract.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 This modified 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

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed  
*(Paragraphs deleted)*

.4 AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended  
*(Table deleted)*

.7 Other documents, if any, listed below:

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

Exhibit A-1 – Owner’s GF (LOCAL) Board Policy

Exhibit B – Prevailing Wage Rate Schedule (see Section 3.4.1.1 of the A201 General Conditions, as amended)

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

\_\_\_\_\_  
OWNER *(Signature)*

\_\_\_\_\_  
CONSTRUCTION MANAGER *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
BTC  
By BTC GP, LLC, Its General Partner  
By Sammy C. Martin, Its President

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

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# AIA Document A201® – 2017

## General Conditions of the Contract for Construction

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

Addition and Renovation to Castleberry High School

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

Castleberry Independent School District  
5228 Ohio Garden Road  
Fort Worth, Texas 76114

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, address, and other information)*

BTC  
1450 N. Jim Wright Freeway  
White Settlement, Texas 76108

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

WRA Architects Inc.  
12377 Merit Dr.  
Suite 1800  
Dallas, Texas 75251

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### ADDITIONS AND DELETIONS:

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

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.

- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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**User Notes:**

(1179668788)

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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 executed Agreement, this modified AIA Document A201—2017, General Conditions of the Contract for Construction, 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.

This AIA Document A201-2017, General Conditions of the Contract of Construction, as modified, shall be the General Conditions for the Project and supersedes any prior general conditions and/or supplemental conditions for the Project.

#### **§ 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. The Contract may 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. This section does not in any way limit the Architect's or the Contractor's duties to the Owner under their respective agreements with the Owner.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.

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

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence:

1. The Agreement
2. This amended A201-2017 General Conditions of the Contract for Construction
3. Addenda, with the most recent Addenda taking precedence over earlier Addenda
4. Specifications
5. Drawings

**§ 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 by a court of competent jurisdiction in an action to construe the Contract Documents that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised by the court to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

**§ 1.2.4** 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. 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 the Owner. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

## **§ 1.3 Capitalization**

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

## **§ 1.4 Interpretation**

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

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

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. 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.

**§ 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 by means of in-person delivery or certified mail. Where one party attempts to provide notice by means of certified mail, but the notice is returned by the US Postal Service, the party may serve notice via first class mail.

**§ 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)*

**ARTICLE 2 OWNER**

**§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner may 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, the Architect does not have such authority. It is expressly acknowledged that Owner is a governmental entity, and as such, only its Board of Trustees, acting as a body corporate, may take any action that would bind the Owner.

*(Paragraphs deleted)*

**§ 2.1.3** The parties acknowledge that no lien rights exist with respect to public property and agree that no lien may be filed related to the Project.

**§ 2.1.5** The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Contract Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Contract Documents.

**§ 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 may 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.

*(Paragraph deleted)*

**§ 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** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

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

### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2, fails to correct defective work, repeatedly fails to carry out Work in accordance with the Contract Documents, fails to complete the Work on time, or is in default of any of its material obligations hereunder, 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. This right shall be in addition to, and not in restriction of, the Owner's rights under Section 12.2.

### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 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. The Architect shall also prepare and execute a Construction Change Directive reflecting the change in the Work and the adjustment of the Contract Sum and Contract Time, if any. 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 must file a Claim pursuant to Article 15. If Contractor fails to file a Claim pursuant to Article 15, it waives any argument or claim regarding this issue.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

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

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

**§ 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 conducted in accordance with the Contract Documents, 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.

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

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

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

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 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.

**§ 3.2.2.1** By executing the Agreement, the Contractor represents and warrants to the Owner and the Architect that it has carefully examined the plans, Construction Documents, specifications, and the site of the Work, and that from its own investigations, it has been satisfied as to the nature and location of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or matters that may in any way affect the Work or its performance. No allowance on the Contractor's behalf will be made by the Owner for any error or negligence by the Contractor failing to visit the site or failing to thoroughly study and compare all of the Construction Documents prior to submitting a proposal or bid. Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied.

**§ 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 has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. 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 would have been avoided if the Contractor had performed such 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, except when the Contractor recognized, or reasonably should have recognized, such error, inconsistency, omission or difference and failed to report it to the Architect

**§ 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 the lines, cables, pipes, and pipelines identified to Contractor.

**§ 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 requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above

requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure. This section does not create any duty on the Owner to pay any amount to the Architect.

**§ 3.2.8** The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely 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.

**§ 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. As part of that responsibility, Contractor shall enforce the Owner's alcohol free, drug free, and weapon free policies and zones, which will require compliance with these policies and zones by Contractor's employees, Subcontractors, and all other persons carrying out the Contract. Contractor shall also require adequate and appropriate dress of Contractor's employees, Subcontractors, and all other persons carrying out the Contract.

**§ 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** The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all Sub-contractors and Sub-sub-contractors.

**§ 3.3.5** 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), Contractor 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 Contractor in the design of the trench safety system; and

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- .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.

§ 3.3.7 It is understood and agreed that the relationship of Contractor 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 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 or any of its authorized representatives 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.

#### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

§ 3.4.1.1 It is required that the Contractor and Subcontractors on the Project pay not less than the prevailing wage rates adopted by Owner pursuant to Texas Government Code Chapter 2258 for wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them. The wage rates adopted by Owner under Chapter 2258 are specified in Exhibit B of the Agreement. Any workers not included in the adopted schedule shall be properly classified and paid no less than the rate of prevailing wages in the locality of the Work at the time of construction. Owner shall be paid by Contractor \$60.00 per violation, per day or part of a day, that a worker is paid less than the adopted prevailing wages.

§ 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.

§ 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.

§ 3.4.4 The Contractor shall not allow any person who has been convicted of a felony or sex offense to carry out any portion of the Work or to be present on Owner's property.

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

§ 3.4.7 In addition to other requirements, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or subcontractor of the Contractor or a Subcontractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present."

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### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is the Contractor's responsibility), improper operation, or normal wear and tear and normal usage, but such exclusions shall only apply after Owner has taken occupancy of the damaged or defective part of the Project. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor's express warranties are in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect by the Contractor on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

§ 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.

§ 3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten (10) days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.4 When indicated on the Construction Documents and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at Substantial Completion of the Work, such assignment to be effective no later than Substantial Completion, any and all manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties. All forms will be required to be submitted prior to Substantial Payment.

§ 3.5.6 The warranties of Contractor provided herein shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the

rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

**§ 3.5.7** Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the requirements under Section 12.2.2.1 herein on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the period under Section 12.2.2.1 herein, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any items which are observed or reported during the period under Section 12.2.2.1 herein. Contractor shall prosecute such Work under Section 12.2.2.1 herein without interruption until accepted by Owner and Architect, even though such Work should extend beyond the period under Section 12.2.2.1 herein. If Contractor fails to provide the schedules to Owner and Architect, Contractor's obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

**§ 3.5.8** Without limitation to any other duties of the Contractor, Contractor is not entitled to Final Payment until it does the following:

- .1 Obtain duplicate original warranties, executed by all Subcontractors, making the dates of beginning of the warranties the Date of Substantial Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Substantial Completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing; and
- .8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner.

### **§ 3.6 Taxes**

Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. Contractor shall fulfill the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

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

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than three days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an 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 the Contractor disputes the Architect's determination or recommendation, the Contractor must 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 be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed in writing. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

**§ 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 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

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- 3 whenever costs are less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the Owner.

### § 3.9 Superintendent

§ 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.

Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 60 days of Substantial Completion.

*(Paragraph deleted)*

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable objection. The Contractor shall not change the superintendent without the Owner's consent. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 60 days of Substantial Completion.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under general conditions for such day.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall 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. Owner or Architect's failure to object to Contractor's submitted schedule does not absolve Contractor of any duties.

§ 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 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor 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 Substantial Completion Date or the Final Completion Date.

### § 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 and 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.

### § 3.12 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. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Contract Documents remain the Contractor's responsibility.

§ 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.

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§ 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 in writing 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 specifically 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 written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified 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.

### § 3.13 Use of Site

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

### § 3.14 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.

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§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

### § 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. The Contractor shall clean up at least weekly, or more often as needed to maintain a safe work site, or as otherwise directed by the Owner. 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.

§ 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.

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

### § 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. **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 SUCH 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 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 ACTS OR OMISSIONS, WHETHER NEGLIGENT, INTENTIONAL, OR OTHERWISE, 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**

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**INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18..**

§ 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 insurance policies, workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them, caused by or resulting from: (1) defects in plans, designs, or specifications prepared, approved, or used by the Architect or engineer; or (2) negligence of the Architect or engineer in the rendition or conduct of professional duties called for or arising out of the construction contract and the plans, designs, or specifications that are a part of the construction contract; and (3) arising from: (a) personal injury or death; (b) property damage; or (c) any other expense that arises from personal injury, death, or property damage, or as otherwise limited by Texas Civil Practice & Remedies Code Section 130.001 *et seq.*

§ 3.18.5 The provisions of Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract.

§ 3.18.6 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 Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect. It is understood and agreed that Subparagraph 3.18.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 3.19 ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 *et seq.* The Contractor shall include this provision in its agreements with each Subcontractor and supplier. Each Subcontractor shall include such provisions in agreements with Sub-subcontractors and suppliers.

**ARTICLE 4 ARCHITECT**

**§ 4.1 General**

§ 4.1.1 If required by law, the Owner shall retain an architect or engineer lawfully licensed to practice architecture or engineering 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.

§ 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.

§ 4.1.3 The Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Contract Documents by the duties, responsibilities, or activities of the Architect.

**§ 4.2 Administration of the Contract**

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will not have authority to act on behalf of the Owner, unless Owner's Board of Trustees has formally authorized the Architect to act on behalf of the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work

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observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with 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. 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 Contractor shall reimburse the Owner for compensation paid to the Architect, if any, for additional site visits made necessary by the fault, neglect, or request of the Contractor.

**§ 4.2.4 Communications**

The Owner and Contractor shall endeavor to communicate with each other through the Architect. 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 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 has authority to reject Work that does not conform to the Contract Documents. The Architect shall report in writing to the Owner known deviations from the Contract Documents and any known non-conforming Work. Architect shall reject non-conforming Work. Whenever the Architect considers it necessary or advisable, the Architect 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. Performance of any additional inspection or testing which would result in additional cost to the Owner shall require advance notice to and 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, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may 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.

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§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site.

§ 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. 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.

§ 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.

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. 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. Contractor shall procure all subcontracts in accordance with Texas Education Code Chapter 44, Subchapter B, and Texas Government Code Chapter 2269, as applicable. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable 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. When the parties agree on a proposed substitute Subcontractor then, the Contract Sum and Contract Time may, by mutual written agreement, be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 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.

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### § 5.3 Subcontractual Relations

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

**§ 5.3.1 SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS ARCHITECTS AND/OR ENGINEERS, CONTRACTOR, ITS SUBSIDIARIES, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ALL CLAIMS FOR WHICH SUBCONTRACTOR IS RESPONSIBLE INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CLAIMS FOR WHICH THE SUBCONTRACTOR OR ITS AGENTS, EMPLOYEES, OR SUBCONTRACTORS OF ANY TIER MAY BE CLAIMED TO BE LIABLE AND LEGAL FEES AND DISBURSEMENTS PAID OR INCURRED TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH FOR WORK TO BE PERFORMED UNDER THIS SUBCONTRACT. IT IS EXPRESSLY UNDERSTOOD THAT THE RIGHTS ARTICULATED IN THIS ARTICLE ARE NOT LIMITATIONS ON ANY OTHER RIGHT CONTAINED IN THIS AGREEMENT OR AT COMMON LAW. THIS SECTION SHALL BE INTERPRETED TO APPLY TO THE FULLEST EXTENT ALLOWED BY LAW.**

§ 5.3.2 Contractor understands and agrees that the language included in § 5.3.1 above is in addition to the rights and responsibilities of the Contractor under the Contract Documents, and nothing contained in the above language shall be construed to limit, reduce or abridge the Contractor's liability arising from or in connection with any property damage, bodily injury, or any other cause of action related to this Project for which Contractor may be held liable, and that this language does not limit, reduce, or abridge Contractor's duty to defend and indemnify Owner in accordance with § 3.18 of this Agreement.

### § 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner 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 and obligations of the surety, if any, obligated under bond relating to the Contract.

*(Paragraphs deleted)*

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any

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Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

*(Paragraph deleted)*

## **§ 6.2 Contractor's Responsibility**

**§ 6.2.1** It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable 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 of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

**§ 6.2.3.3** All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Contract Documents, will be borne by the Contractor.

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

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

## **§ 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. The parties stipulate that (1) the term "change order" as used in Texas Local Gov't Code 271.153(2) exclusively means a fully executed Change Order as defined herein, and (2) the phrase "additional work the contractor is directed to perform by a local governmental entity in connection with the contract" exclusively refers to additional work that is the subject of a fully executed Construction Change Directive as defined herein.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner (based on the specific approval of each particular Change Order by the Owner's Board of Trustees), 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.

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§ 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.

## § 7.2 Change Orders

§ 7.2.1 A Change Order is AIA Document G701(as it may be modified) prepared by the Architect or Owner and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.3 **Pricing Change Order Work.** The amounts that Contractor and/or its Subcontractor adds to a proposed Change Order for profit and overhead will be considered by Owner before approval is given. The amounts established hereinafter are the maximums that will be considered for proposed Change Orders.

§ 7.2.3.1 For Work performed by its forces, Contractor may propose its actual costs paid for materials, the total amount of its actual wages paid for labor, plus its actual cost paid for State and Federal payroll taxes and for workers' compensation and comprehensive general liability insurance, plus its actual additional bond and builder's risk insurance cost if the change directly results in an increase in the premium paid by Contractor. To the total of the above costs, Contractor will be allowed to propose to add a percentage as noted below to cover overhead and profit combined. Overhead shall be considered to include insurance other than mentioned above, field and office supervisors and assistants, including safety and scheduling personnel, use of small tools, incidental job burdens and general Home Office expenses, and no separate allowance will be made therefor.

The maximum Contractor mark-up for overhead, profit or fee for Work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The maximum Contractor mark-up for overhead, profit or fee for supervision of Work performed by subcontractors' forces shall not exceed 5% of the cost of the change in the Work. The maximum subcontractor mark-up for overhead, profit or fee for Work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the Work, exceed 15% of the total cost of the Change in the Work.

## § 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 at the Owner's election, either as provided in Section 7.3.4 or in 7.2.3 and 7.2.3.1 above.

§ 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

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profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor must make a Claim in accordance with applicable provisions of Article 15 or else it waives any claim related to this issue. If a Construction Change Directive is issued pursuant to Section 2.5 and the Contractor disagrees with the adjustment in the Contract Sum or adjustment of the scope of the Work, Contractor shall make a Claim within ten (10) days of the date it receives notice of the Construction Change Directive. If the Contractor fails to make a Claim within ten (10) days of the date it receives notice of the Construction Change Directive, then the Contractor is deemed to have accepted the terms of the Construction Change Directive and the Construction Change Directive shall have the same force and effect as a Change Order.

§ 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 as confirmed by the Architect plus an allowance for reduced overhead and profit. 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 or decrease, 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 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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written orders signed by the Architect and shall be binding on the Owner and Contractor.

## ARTICLE 8 TIME

### § 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

### § 8.2 Progress and Completion

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

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

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an 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; 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. Under no circumstances shall the Owner be required to pay the Contractor any compensation for such 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 the recovery of damages by the Contractor for any delay or disruption, including, but not limited to, delays due to bad weather or acts of God. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

## 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.

*(Paragraph deleted)*

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect 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. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703,

Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702Cmc and G703 shall be used.

§ 9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

- .1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.
- .2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.
- .3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).
- .4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.
- .5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.
- .6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Contractor must submit 24 photographs of the construction site that depict the Work subject to each Application for Payment. Without limiting any of Owner's rights under this Agreement, Owner's payment of any amount to Contractor does not constitute a waiver of any claims arising out of or related to the Work for which payment is being sought, whether or not any supporting data or materials included with the Application for Payment depicts or discloses any information that serves as the basis for those claims.

§ 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.

### § 9.3.2

Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.

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- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Unless approved in writing by the Owner, the Owner will not reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

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

**§ 9.3.4** Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

#### **§ 9.4 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.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

#### § 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

§ 9.5.2 When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor must submit a Claim in accordance with Article 15. Contractor's failure to submit a Claim in accordance with Article 15 waives any claim or argument by Contractor related to this issue.

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

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as allowed by contract.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided by law, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. 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, then 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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§ 9.6.3 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 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.

§ 9.6.8 - 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 days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by litigation, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. However, in order to stop or suspend the Work, the Contractor must strictly comply with Chapter 2251 of the Texas Government Code in all respects, notwithstanding any other provision in the Contract Documents. The Contract Time shall be extended appropriately.

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

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

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has

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been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within the greater of (1) 60 days, or (2) the Agreement's required deadline for final completion. Contractor shall complete Owner's Substantial Completion Certificate.

**§ 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 and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect shall supply a copy of this list to the Owner and 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.

**§ 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.

### **§ 9.9 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 otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**§ 9.9.4** In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

**§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Payment of retainage is not due until the Contractor achieves final completion of the entire Work and meets all conditions for final payment.

**§ 9.10.2** As a condition precedent to the Owner's issuance of final payment and payment of any remaining retained percentage, Contractor must submit to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a copy of the insurance policy 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, as well as signed warranties for all products and services related to the Project; (6) 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; (7) written certifications required by Section 10.5, 10.6, and 10.7; (8) final list of subcontractors (AIA Document G705); (9) Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at [https://tea.texas.gov/sites/default/files/cert\\_2004.pdf](https://tea.texas.gov/sites/default/files/cert_2004.pdf); (10) Maintenance and Instruction Manuals; (11) Owner's Final Completion Certificate; and (12) record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. Final payment by Owner is conditioned upon fulfillment of all obligations set forth in this Section 9.10.2 and receipt of a Certificate for Payment from the Architect as set forth in Section 9.10.1.

**§ 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 shall not constitute a waiver of Claims.

**§ 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;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 claims then pending.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee.

§ 9.10.6 Owner shall deduct accrued liquidated damages from Final Payment to Contractor. The total accrual of liquidated damages shall be based on the dollar amounts established in the Agreement, , date of Substantial Completion established in the Certificate of Substantial Completion, and the date of the Final Certificate for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students, and other persons on Owner's premises, and other persons who may be affected thereby, including 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 or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as other buildings and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 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 installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable full protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss 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 must 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. Contractor's failure to make a Claim as required by this agreement waives any claim or argument by Contractor regarding this issue. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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§ 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)*

### § 10.3 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, 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.

*(Paragraphs deleted)*

§ 10.3.5 The Contractor shall indemnify the Owner for the costs and expense the Owner incurs (1) for remediation of a material or substance 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.

*(Paragraph deleted)*

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### § 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.5.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.5.2 Final Payment shall not be made until this written certification has been received.

### § 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

## **§ 10.7 HAZARDOUS MATERIALS CERTIFICATION**

**§ 10.7** The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the section in the Project Manual related to contract closeout.

## **ARTICLE 11 INSURANCE AND BONDS**

**§ 11.0.1** No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Compliance with this Article 11 by Contractor is a condition precedent to any payment from Owner to Contractor. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

**§ 11.0.2** Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of all required insurance policies, declarations, and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

**§ 11.0.3** All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, [www.ambest.com](http://www.ambest.com), and that permits waivers of subrogation.

**§ 11.0.4** All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's workers' compensation insurance.

**§ 11.0.5** All insurance required herein shall, by endorsement, be primary insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

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

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

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

**§ 11.0.9** In the event that the insurers issuing the policies required under this Article 11 deny coverage to Owner, the Contractor or subcontractor will, upon demand by Owner, defend and indemnify the Owner at the Contractor's or Subcontractor's sole expense, unless it is the Owner's insurance that denies coverage.



§ 11.0.10 The Contractor shall require subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of Work by the subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by Owner of Contractor's or the subcontractor's insurance obligations set forth herein.

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect them and the Owner from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see Sections 11.1.2.1 and 11.1.5);
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18; and
- .9 Claims for damages to the Work itself, through builder's risk insurance.

§ 11.1.1.9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

- a. Premises Operations (including X, C and U coverages as applicable).
- b. Independent Contractors' Protective.
- c. Products and Completed Operations.
- d. Personal Injury Liability with Employment Exclusion deleted.
- e. Contractual, including specified provision for Contractor's obligation under 3.18.
- f. Owned, non-owned and hired motor vehicles.
- g. Broad Form Property Damage including Completed Operations.

§ 11.1.1.10 The Contractor shall provide such General Liability Insurance by a Commercial General Liability Policy on an occurrence policy. The Contractor shall maintain this policy from the date of Commencement until one year after the date of final payment.

Commercial General Liability (Occurrence Basis) must:

- (i) be on ISO form CG 00 01 12 04, or equivalent;
- (ii) not modify the separation of insured language;
- (iii) designate Construction Project(s) General Aggregate Limits (ISO CG 25 03 97), or equivalent;
- (iv) delete the contractual liability exclusion with respect to personal injury; and
- (v) state that the defense of any claim and all claim or suit expenses will be provided as an additional benefit and will not be included within the limit of liability.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater. Coverages, on an occurrence basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of

completed operations coverage as specified in the Contract Documents. The stipulated limits of liability aggregate coverages shall be for this Project. The following limits are required:

- .1 Commercial General Liability including Premises Operations, Independent Contractors' Protective, Products and Completed Operations, Broad Form Property Damage, Contractual Insurance, and Personal Injury with coverage not less than the following:
  - (a) General Aggregate:  
\$2,000,000.00 and it shall apply, in total, to this Project only.
  - (b) Products and Complete Operations Aggregate:  
\$2,000,000.00 to be maintained for two years after final payment.
  - (c) Personal and Advertising Injury, with Employment Exclusion Deleted:  
\$1,000,000.00
  - (d) Each Occurrence:  
\$1,000,000.00
  - (e) Fire Damage (any one fire):  
\$50,000.00
- .1.1 Contractual Liability:
  1. Property Damage shall be included in Commercial General Liability Coverage.
  2. Insurance sufficient to cover Contractor's contractual indemnities.
- .2 Business Auto Liability (including owned, non-owned, hired, or any other vehicles) with limits not less than the following:
  - (a) Bodily injury and property damage with combined single limit of \$1,000,000.00.
- .3 Umbrella Excess Liability:
  - (a) \$2,000,000.00 over primary insurance and List Owner as additional insured.
- .4 All Risk Builders Risk Insurance:

If Contractor is a Construction Manager at Risk, then, as specified in each Guaranteed Maximum Price Amendment, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.3.

§ 11.1.3 Certificates of insurance with all required endorsements attached acceptable to the Owner shall be filed with the Architect and Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. An additional certificate, policy, and endorsement evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to the Owner and Architect within five days of Contractor's first notice of the same. The Contractor shall also provide to the Owner prior to commencing the Work full copies of all insurance policies and endorsements required by the Contract Documents. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required herein. The Contractor shall provide such written notice within five business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

#### § 11.1.5 General Requirements

- (a) Policies. All policies must:

- (i) Be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of Class VIII, or better, and/or *Standard & Poor Insurance Solvency Review* of A- or better, and admitted to engage in the business of insurance in the State in which the Project is located;
- (ii) Be endorsed to be primary with the policies of all Owner being excess, secondary and noncontributing;
- (iii) Issued on an "occurrence based" policy;
- (iv) With respect to all liability policies except workers' compensation/employer's liability, be endorsed to include the Owner as "additional insured"; and
- (v) Contain a provision for 30 days' prior written notice by insurance carrier to Owner required for cancellation, nonrenewal, or substantial modification.

**(b) Limits, Deductibles and Retentions**

- (i) Except as expressly provided above, no deductible or self-insured retention in excess of \$25,000 without prior written approval of Owner.
- (ii) No policy may include an endorsement restricting, limiting, or excluding coverage in any manner without the prior written approval of Owner.

**(c) Forms**

- (i) If the forms of policies, endorsements certificates, or evidence of insurance required by Article 11 of this Agreement are superseded or discontinued, Owner will have the right to require other equivalent forms; and
- (ii) Any policy or endorsement form other than a form specified in Article 11 of this Agreement must be approved in advance and in writing by Owner.

**(d) Evidence of Insurance.** Insurance must be evidenced as follows:

- (i) Copies of the required insurance policies, declaration, and endorsements themselves;
- (ii) ACORD Form 25 *Certificates of Liability Insurance* for liability coverages;
- (iii) ACORD Form 28 *Evidence of Property Insurance* for property coverages;
- (iv) Evidence to be delivered to Owner prior to commencing Work on the Project and at least thirty (30) days prior to the expiration of current policies; and
- (v) ACORD forms must:
  - a. Show the Owner as Certificate holders (with Owner's mailing address);
  - b. Show Contractors as the "Named Insured";
  - c. Show the insurance companies producing each coverage and the policy number and the policy date of each coverage;
  - d. Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;
  - e. Specify the additional insured status (on a separate ACORD Form 45);
  - f. State the amounts of all deductibles and self-insured retentions;
  - g. Show the primary status and aggregate limit per project where required;
  - h. Be accompanied by copies of all required additional insured endorsements; and
  - i. The phrases "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon Company, its agents, or representatives" must be deleted from the cancellation provision of the ACORD 25 certificate and the following express provision added: "This is to certify that the policies of insurance described herein have been issued to the Insured for whom this certificate is executed and are in force at this time. In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, 30 days' prior written notice will be given to the certificate holder by certified mail or registered mail, return receipt requested."

**(e) Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of

notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.1.5.1 ADDITIONAL INSURED STATUS AND CERTIFICATES OF INSURANCE**

The provisions of this Section 11.1.5.1 are in addition to any other requirements of the Contractor under this Agreement, and do not reduce or otherwise limit any of Contractor's duties.

Owner, along with their respective officers, agents and employees, shall be named on the Commercial General Liability Insurance as Additional Insured (CG 20 10 04 13) for Ongoing Operations and Product's/Completed Operations (CG 20 37 04 13) on the Contractor's and any Subcontractor's Commercial General Liability policy, to the extent that it is permitted by law. This insurance must be primary and noncontributory with respect to the Additional Insureds. This insurance shall remain in effect as set forth below, in the "Continuation of Coverage" provision. Furthermore, Owner, along with their respective officers, agents and employees, shall be named as an Additional Insured to the Contractor's and any Subcontractor's Commercial Auto Liability Policies, to the extent that it is permitted by the law.

It is expressly understood by the parties to this Contract that it is the intent of the parties that any insurance obtained by Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Contractor, the Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or any directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile, Workers' Compensation and Excess Liability policies in favor of Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all projects during the policy term.

Prior to commencement of Work, Contractor shall submit a Certificate of Insurance to Owner and the aforementioned Additional Insured Endorsements as required by this contract. The Certificate shall be in a form approved for use in the state in which the Work is to take place. Copies of insurance policies shall promptly be made available to Owner upon request. Contractor or Subcontractor's Insurance Broker shall endeavor to notify Owner of any change in policy or Notice of Cancellation at least 30 days prior to such change or notice taking effect.

The policies required hereunder shall not contain any exclusion or other provision that would deny coverage for a claim made by Owner due to Owner's status as an additional insured.

#### **CANCELLATION, RENEWAL AND MODIFICATION**

The Contractor shall maintain in effect all insurance coverages required under this Agreement at the Contractor's sole expense and with insurance companies acceptable to Owner until final completion and acceptance of the entirety of the Contract Work; or longer if so provided in the Agreement such as with respect to completed operations coverage. Certificates of Insurance showing required coverage to be in force must be delivered to Owner prior to commencement of the Contract Work. In the event the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, this shall be considered a material breach of the contract, entitling Owner, at its sole discretion, to purchase such equivalent coverage as desired for Owner's benefit and charge the expense to the Contractor, or, in the alternative, exercise all remedies otherwise provided in the contract, or as permitted by law or equity.

#### **CONTINUATION OF COVERAGE**

The Contractor shall continue to carry Completed Operations Liability Insurance for at least ten (10) years after either ninety (90) days following Substantial Completion of the Work or final payment to the Contractor, whichever is later. The Contractor shall furnish Owner evidence of such insurance at final payment and in each successive year during which the insurance coverage must remain in effect.

#### **§ 11.2 OWNER'S INSURANCE**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance

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companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 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.

§ 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.

§ 11.2.4 Insurance for Existing Structures: If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section 11.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 BUILDER'S RISK INSURANCE. Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum (or, if the Project is a Construction Manager at Risk project, Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Policy shall be inland marine form. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsehood, 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 Contractor, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. The insurance policies required by this Section 11.3 shall contain a provision that coverages afforded under the policies will not be cancelled for any reason, other than nonpayment of premium, or reduced or restricted due to a material change in coverage until at least 30 days' prior written notice of such cancellation or material change has been given to the Owner. Contractor shall provide Owner 30 days prior written notice of the expiration of any policy required by Section 11.3. Contractor shall provide Owner 10 days prior written notice of cancellation due to non-payment of premium of any policy required by Section 11.3.

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

§ 11.3.2 For any claim made against the builder's risk insurance, the deductible shall not exceed \$5,000 for a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of less than \$4 million. For a Contract Sum (or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project) of \$4 million or more, the deductible shall not exceed \$10,000 for AOP other than wind, hail, flood, and earth movement.

§ 11.3.5 Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall procure and maintain all bonds required for the Work by law or the Contract Documents. Each bond must be in a total amount equal to 100% of the Contract Sum, or Guaranteed Maximum Price if the Project is a Construction Manager at Risk project, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the Owner to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-X" according to the latest posted ratings on the A.M. Best website, [www.ambest.com](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

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

§ 11.4.3 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

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

*(Paragraphs deleted)*

#### § 11.6 WORKERS' COMPENSATION INSURANCE

A copy of a certificate of insurance or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing

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services on a project is required for the duration of the Project.

Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the governmental entity.

Persons providing services on the Project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

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

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

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

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

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

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

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

The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

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

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

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4. Obtain from each other person with whom it contracts, and provide to the Contractor:
  - a. A certificate of coverage, prior to the other person beginning Work on the Project; and
  - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
6. Notify the governmental entity in writing by certified mail or personal delivery, within ten (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.

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

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy issued for delivery, or renewed on or after January 1, 1996. 28 TAC 110.110(i).

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

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

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

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

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

§ 12.2.1.2 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

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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 after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.1.1** 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.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 12.2.6** Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

**§ 12.2.7** The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor.

### **§ 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. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. Exclusive venue for any action arising out of the Project or the Contract Documents is in the state courts of the county in which the Owner's administrative offices are located.

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 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.

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**§ 13.5 Interest**

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the requirements of the law.

**§ 13.7** Any right to recovery of attorney fees available under Texas Local Government Code Chapter 271, Subchapter I, is hereby waived.

**§ 13.9 RECORDS**

**§ 13.9.1** Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least eight (8) years after the date of Final Completion of the Project. Within 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.

**§ 13.9.2** If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

**§ 13.9.3** Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

**§ 13.9.4** Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

**§ 13.9.5** In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums on a Certificate for Payment within the time stated in the Contract Documents.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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§ 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 for Work executed, and no other amount.

§ 14.1.4 If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon twenty additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 Termination by the Owner for Cause**

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the

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accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.5. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

**§ 14.3 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 Time shall be adjusted for increases in the time caused by suspension, delay, or interruption under Section 14.3.1. 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 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. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and no other amount.

**§ 14.4.4** Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

**ARTICLE 15 CLAIMS AND DISPUTES**

**§ 15.1 Claims**

**§ 15.1.1 Definition**

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of any contractual responsibility, 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 Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Contractor's failure to file a timely and proper claim as described in this Article 15 constitutes a waiver of Contractor's right to make any claim or argument regarding that subject matter and a failure to follow contractual adjudication procedures necessary to maintain its right to seek any judicial relief against Owner. The requirements of this Section 15.1 (and all of its subparts) shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.

*(Paragraphs deleted)*

**§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to

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the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims under this Section 15.1.3.1 shall be initiated within 90 days after occurrence of the event giving rise to such Claim or within 90 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by the Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the Owner. In such event, no decision by the Initial Decision Maker is required. Claims under this Section 15.1.3.2 shall be initiated within 90 days after occurrence of the event giving rise to such Claim or within 90 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.3 All Claims by Contractor must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, is waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 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 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were: (1) "Unusually Severe" for the period of time, (2) could not have been reasonably anticipated, (3) were beyond the control and without the fault or negligence of the Contractor, and (4) had an adverse effect on critical path activities for more than 50% of the scheduled work day.

"Unusually Severe" weather is defined as weather that exceeds the weather conditions usually encountered at the Project site during the month involved, and is determined by calculating the amount to which the actual weather encountered at the Project site exceeds the average of the relevant weather data for the Project site for the previous 10 years, as collected by the National Oceanic and Atmospheric Administration (NOAA). Only weather delays that (1) exceed the greater of: (A) the 10-year NOAA average for the project site during the relevant month, or (B) the anticipated weather days identified in the Specifications (if any), and (2) meet all other criteria listed above may be compensable by an increase in Contract Time.

*(Paragraphs deleted)*

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### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to, 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. Contractor also waives all claims for increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

This waiver is applicable, without limitation, to all such damages due to Owner'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 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, 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 Contract. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation or litigation of any Claim.

§ 15.2.2 The Initial Decision Maker will review Claims and within 30 days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision is subject to mediation and, if the parties fail to resolve their dispute through mediation, to litigation. Nothing in this agreement is intended to waive any of Owner's immunity from suit or liability.

### § 15.3. Contractual Adjudication Procedure for all Claims and Disputes

- .1 The requirements of this Section 15.3 shall constitute an independent "contractual adjudication procedure" as that term is used in Texas Local Government Code Chapter 271 Subchapter I.
- .2 **Pre-Litigation Grievance and Mediation.** Any claim, dispute or other matter in question that Contractor has against Owner shall be subject to full exhaustion of the grievance procedure found in Owner's GF (LOCAL) policy and non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by Contractor. In the case of any such claim, dispute, or other matter, by the Contractor against the Owner, including, but not limited to, any claim that the Owner has breached a contract, the Contractor may not file a lawsuit or demand mediation until the complaint procedure found in Owner's GF (LOCAL) policy has been fully exhausted regarding the contested matter. A copy of this policy is attached hereto and incorporated herein as Exhibit A. The

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Contractor's failure to timely file a grievance under policy GF (LOCAL), meet any requirement of this Article 15, or otherwise fully exhaust policy GF (LOCAL) in accordance with the policy's requirements is a failure to adhere to contractual adjudication procedures, a failure to exhaust remedies, a failure to fulfill conditions precedent, constitutes waiver, and is a bar to suit against the Owner.

- a. The timelines under Policy GF (LOCAL) are amended for purposes of this Agreement as follows: Contractor's complaint must be reduced to writing and filed within ninety (90) calendar days of the date the Contractor first knew, or with reasonable diligence should have known, of the decision or action giving rise to the complaint. If the Contractor fails to meet this timeline, the Contractor will have failed to exhaust this remedy, will have failed to adhere to this contractual adjudication procedure, will have failed to fulfill conditions precedent to suit, will have waived the complaint, and will be barred from suing the Owner.
- b. Contractor agrees that, in order to fully exhaust its remedies under policy GF (LOCAL) and otherwise comply with this Section 15.3, Contractor must identify and articulate in writing the specific factual and legal basis for its claims. Any basis that is not identified and articulated by the Contractor as part of its complaint under GF (LOCAL) is waived by the Contractor and may not be asserted in any subsequent proceeding against the Owner.
- c. The following are each an independent condition precedent to the institution of civil proceedings by the Contractor against the Owner concerning the contested matter: 1) full exhaustion of claims through Owner's GF (LOCAL) policy as described herein, 2) full exhaustion of the Claims process referenced in the Agreement and the applicable A201, 3) a written demand by the Contractor for mediation, and 4) good faith and full participation in the mediation process.
- d. Following the full exhaustion of claims through Owner's GF (LOCAL) procedure, and upon receipt by Owner of Contractor's written demand for mediation, Owner may, at its option, either proceed with non-binding mediation of the dispute, or provide written notice to Contractor of Owner's decision to waive its right to compel such mediation. Owner's voluntary participation in any mediation or any other settlement discussions shall not be construed as a waiver of any failure by Contractor to exhaust remedies, follow contractual adjudication procedures, or otherwise comply with the Contract Documents. If the parties participate in mediation, the parties shall share the mediator's fee and any filing fees equally.

## ARTICLE 16 MISCELLANEOUS

§ 16.1 Contractor agrees to waive any claim it has or may have against the Owner, the Architect, and their respective employees and officers, arising out of or in connection with the administration, evaluation, or recommendation of any bid; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any bids; and award of the Contract.

§ 16.3 The Contractor shall not execute a contract with any Subcontractor that contains an agreement or provision to arbitrate claims. In the event that a Subcontractor seeks to arbitrate a claim arising out of or relating to the Contract Document or this Project, Contractor shall not seek to join in such or any other arbitration proceeding relating to this Project.

§ 16.4 In the event that this modified AIA A201-2017 is not signed by the Architect, the absence of the Architect's signature does not affect the validity of this document as between Owner and Contractor for this Project, and shall not be interpreted as an indication that this modified AIA A201-2017 is not effective.

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**OWNER**

**CONTRACTOR**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

The Architect acknowledges that this modified AIA A201-2017 is the A201 that is applicable to the Project.

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

*(Paragraphs deleted)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DATE**

SUBCONTRACT AGREEMENT (24-472-XX)

BTC
P.O. Box 151829
Fort Worth, Texas 76108-5829
Telephone: (817) 467-4981 Facsimile: (817) 467-5619

\*\*\*\*\*

This Subcontract Agreement (herein called "Agreement") is made and entered into as of this day of 20, by and between BTC, (herein called "Contractor") and SUBCONTRACTORS NAME (herein called "Subcontractor") to perform part of the Work on the following Project:

Table with 2 columns and 3 rows. The bottom row contains the word 'TOTAL' and a dollar sign '\$'.

Subcontractor shall not attach any proposal/bid or special addendum to this Subcontract Agreement. The only acceptable attachment will be the Proposal Form prepared by Contractor and included as part of the Proposal Package Manual. Any and all special conditions and exclusions shall be written on the Proposal Form and NOT included as an attachment to the Proposal Form or to this Subcontract Agreement.

Such work shall be herein called the "Subcontract Work."

1.02 Contract Documents.

a. The Contract Documents shall include, in addition to this Agreement, all documents reflecting the agreement between the Owner and Contractor for the construction of the Project, including, but not limited to, the plans, specifications, general conditions, special conditions, addenda, performance bond, and payment bond (the "Prime Agreement").

b. Subcontractor agrees that prior to acceptance of this Agreement, as evidenced by the signatures of both Contractor and Subcontractor hereon or by Subcontractor's commencement of the Subcontract Work, Subcontractor will read the Contract Documents and be familiar with each and every part thereof affecting the Subcontract Work together with all related drawings, plans, specifications, and all general conditions and special conditions incidental thereto.

PROJECT:
Castleberry ISD High School Addition
215 Churchill Road
Fort Worth, TX 76114
OWNER:
Castleberry Independent School District
5228 Ohio Garden Road
Fort Worth, TX 76114

I. SCOPE OF WORK

1.01 Subcontract Work. Subcontractor shall furnish and pay for all labor, materials, fuel, equipment, tools, machinery, and supplies; perform all work; obtain and pay for all necessary permits, licenses and fees; pay all state sales taxes for which the Owner is not exempt, state and federal unemployment taxes, and all other taxes and fees associated with the subcontract labor or materials; provide all required construction layout and surveying; and do all things necessary to complete the following work, together with all appurtenant and related work, in strict compliance with the Contract Documents described in the following paragraph 1.02, for the following work:

"TBD - Based on individual Proposal Packages"

Complete all work for the Castleberry ISD High School Addn. - Early Package as shown on the plans, described in the specifications, and in accordance with BTC Proposal Package XX.

General Scope of work shall include but is not limited to the following: All items listed on the scope reviews for Proposal Package XX with a "yes," "included," or other affirmative response; badging; criminal history background checks; specified wage rate.

The only accepted exclusions are sales tax in accordance with the Owner's tax-exempt status.

c. Subcontractor agrees that prior to acceptance of this Agreement, as evidenced by the signatures of both Contractor and Subcontractor hereon or by Subcontractor's commencement of the Subcontract Work, Subcontractor will be satisfied by examination as to the nature and location of the work specified herein; the character, quantity, and kinds of materials necessary; the adequacy of any surface or subsurface conditions necessary to assure proper performance of the Subcontract Work; the kinds and quantity of equipment needed; and other local conditions or matters affecting compliance with the Contract Documents. Subcontractor accepts these existing conditions for the performance of the Subcontract Work at the Subcontract Price.

d. Subcontractor agrees that prior to acceptance of this Agreement, as evidenced by the signatures of both Contractor and Subcontractor hereon or by Subcontractor's commencement of the Subcontract Work, Subcontractor will review the Owner's Financial Information provided by Contractor and will accept the risks associated with the Owner's failure to make payment. Further, Subcontractor's acceptance of this Agreement, or initiation of the Subcontract Work, shall constitute Subcontractor's representation to Contractor and confirmation that prior to such acceptance of this Agreement or initiation of the Subcontract Work: (i) Subcontractor received from Contractor and reviewed the Owner's Financial Information; (ii) such information was adequate for Subcontractor to evaluate and understand the risks of the Owner's non-payment; and (iii) Subcontractor accepted the risk of the Owner's payment as a condition precedent to Contractor's obligation to pay Subcontractor.

e. Subcontractor represents to Contractor that Subcontractor is knowledgeable and familiar with all statutes, codes, ordinances, rules and regulations applicable to the Subcontract Work. Subcontractor further agrees that Subcontractor will not proceed with any portion of the Subcontract Work that is in violation or variance with any such statute, code, ordinance, rule or regulation, and will promptly notify Contractor in writing of any such violation or variance before commencing with the Subcontract Work.

f. Any questions arising with respect to interpretation of the Contract Documents, or any related drawings, plans, or specifications, or any other communication related to the performance of the Subcontract Work, shall be submitted through Contractor for submission to the Owner or the Owner's representative. Subcontractor shall follow the directions of the Owner or the Owner's representative, as conveyed by Contractor, with respect to any such matters. Subcontractor agrees that the Owner's (or Owner's representative's) interpretation of the requirements of the Contract Documents shall be final, as long as such interpretation and/or decision is not in conflict with the terms of the Contract Documents.

g. Subcontractor agrees to become familiar with the respective rights, powers, benefits and liabilities of Contractor and the Owner under the Prime Agreement and hereby agrees to comply with and perform all provisions thereof which are applicable to the Subcontract Work. Subcontractor agrees to be

bound to Contractor under this Agreement according to the same terms and conditions as Contractor is bound to the Owner under the Prime Agreement. Subcontractor shall assume and perform all of the obligations and responsibilities of Contractor under the Prime Agreement which pertain or relate to the Subcontract Work as described in Paragraph 1.01.

h. CONTRACTOR AND SUBCONTRACTOR AGREE TO USE ELECTRONIC MEANS TO TRANSMIT INFORMATION RELATED TO THIS AGREEMENT. SUBCONTRACTOR AGREES THAT ANY DOCUMENT DELIVERED TO SUBCONTRACTOR BY USE OF ELECTRONIC MEANS, INCLUDING BUT NOT LIMITED TO (i) EMAIL; (ii) A .PDF, .TIF, .JPG, .XLS, .DOCX, OR OTHER EMAIL ATTACHMENT, OR (iii) OTHER ELECTRONIC FORMAT WILL BE BINDING AS IF AN ORIGINAL DOCUMENT HAS BEEN DELIVERED TO THE SUBCONTRACTOR. FOR ANY DOCUMENTS REQUIRING A SIGNATURE (INCLUDING, WITHOUT LIMITATION, THIS AGREEMENT ISSUED HEREUNDER), SUBCONTRACTOR SHALL PRINT THE DOCUMENT, SIGN THE DOCUMENT, HAVE THE DOCUMENT NOTARIZED, IF REQUIRED, SCAN THE EXECUTED DOCUMENT IN PDF FORMAT, AND RETURN THE FULLY EXECUTED DOCUMENT TO CONTRACTOR VIA E-MAIL.

Bid Package(s) referenced in scope of work  
Scope review for bid package referenced in scope of work  
Exhibit A Listing of Specifications and Drawings  
Exhibit B Criminal History Records  
Exhibit C Construction Schedule (Project Schedule)  
Exhibit D Statement of Ownership and Funding

## **II. PERFORMANCE AND PROSECUTION OF WORK**

**2.01. Independent Contractor.** Subcontractor agrees that it is an independent contractor under this Agreement. Subcontractor is exclusively and solely responsible for, and has control over, all construction means, methods, techniques, procedures, and/or supervision of the Subcontract Work including any means, methods, techniques, procedures, and/or supervision related to the safety of Subcontractor's employees and any other persons working in the area of the Subcontract Work.

**2.02. Storage of Materials.** Subcontractor shall examine all equipment and materials furnished in connection with the Subcontract Work for compliance with the applicable Contract Documents. Subcontractor shall then unload and properly store all such equipment and materials to prevent damage or loss. Contractor may deduct all costs for such damage or loss resulting from improperly stored materials from payments due to Subcontractor. If such costs exceed the unpaid Subcontract

Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

**2.03 Surface and Subsurface Conditions.** Subcontractor shall inspect surface and/or subsurface conditions affecting the Subcontract Work to assure that the Subcontract Work will be properly performed in accordance with the applicable Contract Documents. If any remedial work is required to the surface or subsurface, Subcontractor shall immediately notify Contractor in writing. IF SUBCONTRACTOR PERFORMS SUBCONTRACT WORK WITHOUT PROVIDING NOTICE THAT SUCH REMEDIAL WORK IS REQUIRED, SUBCONTRACTOR ACCEPTS ALL SURFACE AND SUBSURFACE CONDITIONS AND WAIVES ANY CLAIMS FOR EXTRA COMPENSATION TO REPAIR OR REMEDY SUCH CONDITIONS OR FOR REPLACEMENT OF THE SUBCONTRACT WORK ARISING OR RESULTING FROM DEFECTS IN THE SURFACE OR SUBSURFACE.

**2.04 Protection of Work.** Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of Contractor and other subcontractors. Subcontractor shall promptly repair any damage caused to the work of Contractor or other subcontractors by Subcontractor or its sub-subcontractors or materialmen at any tier. If Subcontractor fails to promptly repair such damage, then Contractor may deduct the costs of such repairs from payments due Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

**2.05 Inspection of Work.** Subcontractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the Subcontract Work by the Owner, Contractor, or their authorized representatives. Subcontract Work not meeting the specifications or intent of the applicable Contract Documents, including, but not limited to, the drawings, plans and specifications, shall be removed, rebuilt, and retested to conform to the requirements of the Contract Documents, all at Subcontractor's expense.

**2.06 Cleanup.** In the course of performing all Subcontract Work, Subcontractor shall keep the construction site and work areas clean at all times of debris associated with the Subcontract Work and/or employees of Subcontractor and its sub-subcontractors and materialmen at any tier. Subcontractor shall remove from the Project site all wastes and excess materials related to the Subcontract Work. If Subcontractor shall fail to remove construction wastes and/or excess materials, Contractor may proceed to perform such duties, and may deduct all costs incurred in performing such duties from payments otherwise due Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand. Subcontractor shall participate in a weekly "General Clean-up" as established by the Contractor based upon the weekly average number of Subcontractor's workers on-site

**2.07 DBE Participation.** If Subcontractor is to perform as a Disadvantaged, Small, Minority, or Female-Owned Business

Enterprise ("DBE"), Subcontractor (i) agrees that all work required by any Work Order will be performed, managed and supervised by Subcontractor's own forces, except for work sub-subcontracted to others with Contractor's prior written consent, and (ii) shall do all things necessary to comply with all applicable federal, state, and municipal laws, rules, regulations, and ordinances governing Subcontractor's performance and continuing certification as a DBE so that its performance will count toward Contractor's DBE requirements in the Prime Agreement.

### **III. TIME, SCHEDULES, AND DELAYS**

**3.01 Time.** Time is of the essence to this Agreement. Subcontractor shall begin the Subcontract Work as soon as instructed by Contractor and shall prosecute the Subcontract Work promptly, efficiently, and in a manner that will not cause delay in the progress of Contractor's work or other work performed on the Project by other subcontractors. ALL SUBCONTRACT WORK SHALL BE PERFORMED IN THE NUMBER OF DAYS SHOWN ON THE PROJECT SCHEDULE, NOT TO EXCEED THE DURATION ALLOTTED IN CALENDAR DAYS FOR THIS PROPOSAL PACKAGE.

**3.02 Project Schedule.** Contractor from time to time may issue a Project Schedule applicable to the Subcontract Work. Subcontractor shall perform all the Subcontract Work as scheduled by Contractor, unless Subcontractor notifies Contractor within three (3) calendar days after receipt of schedule requirements that the Subcontract Work cannot be performed within the time scheduled by Contractor. Contractor may, from time to time, reschedule the order of the Subcontract Work or otherwise revise Subcontractor's schedule. Subcontractor agrees to comply with such schedule revisions, unless Subcontractor notifies Contractor within three (3) calendar days after receipt of schedule revisions that the Subcontract Work cannot be performed within the revised time scheduled by Contractor, without any increase to the Subcontract Price for acceleration or delays.

**3.03 Performance Reports.** Subcontractor shall furnish periodic progress reports of the Subcontract Work as may be required by Contractor; and shall attend periodic conferences at the Project site to discuss progress. Subcontractor shall attend mandatory weekly progress meetings while working on site and shall provide a weekly progress schedule indicating the work scheduled within the next three weeks of the meeting day. This three week advance schedule shall be detailed and in compliance with the overall project schedule provided in article 3.02.

**3.04 Damages for Delay to Contractor.** Subcontractor shall be liable for any damages for delay sustained by Contractor caused directly or indirectly by Subcontractor; including, but not limited to, damages, liquidated or otherwise, for which Contractor is liable to Owner. Any such damages shall be deducted from payments due Subcontractor, and, if such damages exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess damages due. Liquidated Damages, as defined in the "Prime

Agreement between the Owner and Contractor are \$1,500/ calendar day, for each and every calendar day beyond the agreed date of Substantial Completion that Contractor fails to achieve Substantial Completion. Subcontractor shall be liable to Contractor for liquidated damages assessed to Contractor by Owner for each and every calendar day the Subcontractor fails to complete the Subcontract Work per the agreed upon Project Schedule. Liquidated damages are also defined in the "Prime Agreement between the Owner and Contractor as \$500/ calendar day, for each and every calendar day for failure to achieve Final Completion within 30 days of Substantial Completion. Subcontractor shall be liable to Contractor for liquidated damages assessed to Contractor by Owner for each and every calendar day the Subcontractor fails to meet all requirements for Final Completion, including but not limited to, all final close-out manuals, warranties and punch list work, within 30 days of the Project Date of Substantial Completion as issued by the Owner and Architect.

**3.05 Time Extensions, Claims, and Damages for Delay to Subcontractor.** CONTRACTOR SHALL NOT BE LIABLE TO SUBCONTRACTOR FOR DELAYS, HINDRANCES, OR INTERRUPTIONS TO THE SUBCONTRACT WORK CAUSED BY THE ACT, NEGLIGENCE OR DEFAULT OF THE OWNER OR OWNER'S REPRESENTATIVE, OR BY REASON OF FIRE OR OTHER CASUALTY, OR ON ACCOUNT OF RIOTS OR STRIKES, OR ON ACCOUNT OF ANY ACTS OF GOD, OR ANY OTHER CAUSES BEYOND CONTRACTOR'S CONTROL, OR ANY CIRCUMSTANCES CAUSED OR CONTRIBUTED TO BY ANY OTHER PARTY PERFORMING A PART OF THE WORK; but, Contractor will cooperate with Subcontractor to enforce any just claim against the Owner or Owner's representative for delay as may be allowed under the Prime Agreement. Contractor shall be reimbursed by Subcontractor for any expense, including attorney's fees, incurred in connection with any claims asserted at the request of Subcontractor. SHOULD SUBCONTRACTOR BE DELAYED IN THE SUBCONTRACT WORK BY CONTRACTOR, THEN SUBCONTRACTOR'S SOLE AND EXCLUSIVE REMEDY AGAINST CONTRACTOR SHALL BE AN EXTENSION OF TIME FOR COMPLETION EQUAL TO THE DELAY CAUSED, AND THEN ONLY IF WRITTEN CLAIM FOR DELAY IS MADE TO CONTRACTOR PRIOR TO INTERFERENCE WITH THE SUBCONTRACT COMPLETION TIME. SUBCONTRACTOR WAIVES AND RELEASES CONTRACTOR FROM ALL CLAIMS AND CAUSES OF ACTION AGAINST CONTRACTOR FOR DAMAGES ARISING OUT OF ANY SUCH DELAYS, HINDRANCES, OR INTERRUPTIONS.

**IV.**  
**PRICE AND PAYMENTS**

**4.01 Subcontract Price.**

[X] Lump Sum - The Subcontract Price shall be the lump sum of \_\_\_\_\_ (\$ \_\_\_\_\_), [including payment and performance bonds] which sum shall be subject to adjustment only as provided in this Agreement.

**4.02 Progress Payments.**

a. Subcontractor shall submit to Contractor monthly applications for payment, on Contractor's specific form, not later than the 20<sup>th</sup> day of each month to enable Contractor to include such requested amounts in its application for payment to the Owner.

Completed, notarized applications shall be scanned in PDF format and e-mailed to both the Contractor's Project Manager and to [invoices@btcbuilds.com](mailto:invoices@btcbuilds.com) with the subject line "Pay Application". Do not send copies to the Owner and/or Architect. An original "hard copy" is not required.

The pay period for a monthly application for payment submitted on the 20<sup>th</sup> of the month shall be projected through the 25<sup>th</sup> of the month. Applications received after the 20<sup>th</sup> day of the month may not be included in the application for payment and as such will be considered for payment during the next pay period.

The amounts of progress payments requested shall be based on Contractor's valuations of work performed by Subcontractor, considering the schedule of values submitted by Subcontractor of the various parts of the Subcontract Work aggregating the total price therefore. In applying for payment, Subcontractor shall submit a statement based upon this schedule. Payments shall be made on account of materials not incorporated in the Subcontract Work, but delivered and suitably stored at the site, only upon submission of evidence of payment from suppliers and only in accordance with the terms and conditions of the applicable Contract Documents. No applications for payment will be processed and no payments will be made unless Subcontractor has submitted a sworn statement certifying the name of all Subcontractor's unpaid materialmen and sub-subcontractors. Contingent upon Contractor's receipt of payment for that month by the Owner, payments for such applications shall be due after the expiration of the statutory period in which a laborer, materialman, or sub-subcontractor of Subcontractor can perfect a valid lien or bond claim. Contractor may pre-pay any payment without waiving any of Contractor's rights under this Agreement. Applications for payment shall be accompanied by completed lien waivers and/or bills paid affidavit forms as may be required by Contractor or Owner.

b. Retainage of ten percent (10%) of the sums due hereunder shall be withheld until completion and acceptance of all Subcontract Work to be performed under this Agreement. Ten (10) days after all conditions precedent to Contractor's obligation to make payment listed below have been completed and satisfied, Contractor's payment of retainage shall be due if:

- (i) Subcontractor has fulfilled the contract requirements for the Subcontract Work of both the Prime Agreement and this Agreement, including the submittal of all information required thereby;
- (ii) Subcontractor has completed all Subcontract Work and the Subcontract Work has been inspected, approved, and fully paid for by the Owner; and
- (iii) Subcontractor has submitted to Contractor a Bills Paid Affidavit for the Subcontract Work and has a lien and/or bond claim release contingent only upon payment of the retainage amount.

c. In the event Contractor believes any of the conditions listed below warrant such action, Contractor may withhold from any payments due hereunder, the sums deemed necessary to protect Contractor and/or Owner from any losses on account of: (i) Defects in the Subcontract Work not remedied; (ii) Failure of Subcontractor to pay bills for labor and/or materials furnished in connection with the Subcontract Work; (iii) Inability of Subcontractor to complete the Subcontract Work for the unpaid balance of the Subcontract Price; (iv) Failure of Subcontractor to diligently prosecute the Subcontract Work such that damages for delay are likely; (v) Damages to another subcontractor; (vi) Breach by Subcontractor of any provision or obligation of this Agreement or of the Prime Agreement applicable to such Subcontract Work; or (vii) Breach by Subcontractor of any provision or obligation of another subcontract agreement or Work Order with Contractor.

d. Subcontractor agrees that Contractor [may in its sole discretion make any payments] OR [shall make payments] due hereunder by means of checks jointly payable to Subcontractor and any of Subcontractor's materialmen or sub-subcontractors. Subcontractor agrees that any such joint check payments made shall constitute payment to Subcontractor under this Agreement for the full amount of such joint check. [Contractor will notify Subcontractor (5) five days prior to making payments by joint checks and afford Subcontractor the opportunity to correct the situation resulting in Contractor option to make payment by joint check.] OR [All invoices for the materials and services provided to the Subcontractor must be job-marked and must be scanned in PDF format and sent each month with the Application for Payment. Provide a list within 30 days of execution of this Agreement of all material suppliers and subcontractors, at any tier, with an approximate contract amount for each. This list can be modified monthly as needed. No payment will be made until this list has been received.]

e. In the event Contractor receives notice of a lien claim or bond claim from Subcontractor's materialmen, sub-subcontractors or laborers, at any tier, Contractor may, at Contractor's option, directly pay any such claimant. Contractor will notify Subcontractor (5) five days prior to making direct payments and afford Subcontractor the opportunity to make payment and obtain a claim release or lien release. Any such direct payment to a claimant and any expenses in processing

such claim and payment shall be deducted from payments otherwise due Subcontractor, and if such payments and expenses exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess amount.

f. If Contractor fails to make payments to Subcontractor which are due pursuant to the terms of this Agreement, after receipt of payment by the Owner for the Subcontract Work, then Subcontractor may, upon seven (7) days written notice to Contractor, stop work without prejudice to any other remedy Subcontractor may have, but only if Contractor fails to cure after receipt of notice.

**4.03 Final Payment.** Contractor's obligation to make final payment to Subcontractor under this Agreement is specifically contingent upon the following conditions, which are conditions precedent to final payment: (a) Submittal by Subcontractor of an affidavit that all payrolls, bills for material and equipment, and other indebtedness connected with the Subcontract Work, have been paid except for bills, invoices and/or indebtedness specifically listed and identified in the affidavit; (b) submittal by Subcontractor of lien releases, or bond claim releases on bonded projects, indicating that all of Subcontractor's materialmen, laborers, and sub-subcontractors have been fully paid and are releasing all statutory lien rights and releasing all bond claims, except claims specifically listed and identified in the releases; (c) consent of Surety to final payment, if required; (d) approval by the Owner, Architect/Engineer, and Contractor of the Subcontract Work and final verification of the quantities of the Subcontract Work performed; and (e) receipt by Contractor of all payments related to the Subcontract Work, including any retainage withheld by the Owner from Contractor. SUBCONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF ALL CLAIMS BY SUBCONTRACTOR RELATING TO THE SUBCONTRACT WORK OR TO CONTRACTOR'S WORK CONNECTED WITH THE APPLICABLE PROJECT OR TO THE CONTRACT DOCUMENTS BUT SHALL IN NO WAY RELIEVE SUBCONTRACTOR OF LIABILITY FOR THE OBLIGATIONS FOR REPLACING FAULTY OR DEFECTIVE WORK APPEARING AFTER FINAL PAYMENT.

**4.04 Contingent Payment Obligation.** Contractor's obligation to make progress payments and final payment to Subcontractor under this Agreement is expressly contingent upon and subject to Owner's acceptance of the Subcontract Work and Contractor's receipt of payment from Owner for the Subcontract Work. It is expressly understood and agreed to by Subcontractor that such receipt of payment by Contractor from the Owner is a condition precedent to Contractor's obligation to pay Subcontractor under this Agreement.

## V. CHANGES AND ADDITIONAL COMPENSATION

**5.01 Changes.** Contractor, from time to time, without invalidating this Agreement, may order changes in the Subcontract Work within the general scope thereof consisting of additions, deletions or other revisions to the Subcontract

Work. Subcontractor, prior to the commencement of such changed or revised work, shall promptly submit to Contractor any claim for adjustment to the Subcontract Price or Project Schedule because of such changed or revised work. All Change Orders, Modifications, Claims for Adjustments, and Notices provided in this Agreement shall be in writing. Subcontractor's overhead and profit shall be according to the requirements of the Prime Agreement.

**5.02 Notice Required.** SUBCONTRACTOR SHALL NOT BE ENTITLED TO ANY EXTRA COMPENSATION OR ADDITIONAL PERFORMANCE TIME UNLESS NOTICE IS GIVEN PRIOR TO BEGINNING THE WORK FOR WHICH CLAIM FOR EXTRA PAYMENT OR EXTRA TIME IS MADE; OTHERWISE, SUCH CLAIM SHALL BE WAIVED. Subcontractor shall not perform any changed, revised, or extra work unless prior to the performance of such work, either: (i) Contractor and Subcontractor enter into a modification changing the Subcontract Price and/or Performance Schedule for such changed Subcontract Work; or (ii) Contractor, after receiving Subcontractor's claim, provides Subcontractor written notice to proceed with the changed, revised, or extra Subcontract Work absent such modification.

**5.03 Finality of Owner's Decision.** Notwithstanding anything contained herein to the contrary, IF THE WORK FOR WHICH SUBCONTRACTOR CLAIMS EXTRA COMPENSATION TO BE DUE IS DETERMINED BY THE OWNER, OR THE OWNER'S REPRESENTATIVE, TO BE SUCH THAT CONTRACTOR IS NOT ENTITLED TO ADDITIONAL COMPENSATION FOR SUCH WORK FROM THE OWNER, THEN SUBCONTRACTOR WAIVES ITS RIGHT TO EXTRA COMPENSATION FOR SUCH WORK AND RELEASES CONTRACTOR FOR ANY LIABILITY OF PAYMENT THEREFOR, EXCEPT TO THE EXTENT CONTRACTOR RECOVERS FROM OWNER ON A CLAIM PURSUED AT SUBCONTRACTOR'S REQUEST AND EXPENSE. Subject to Subcontractor's right to participate in a proceeding disputing such a decision as provided in the Prime Agreement, the decision of the Owner, or the Architect/Engineer as the Owner's representative, shall be final with regard to whether extra compensation is due and with regard to the amount of such extra compensation.

**5.04 Claims Against Owner.** Contractor will cooperate with Subcontractor to submit any valid and enforceable claim against the Owner or the Owner's representative for extra compensation or other relief allowed under the applicable Prime Agreement. As a condition precedent to Contractor's agreement to cooperate in the submittal of Subcontractor's claim against the Owner, Subcontractor agrees to pay for any expense, including attorney's fees, incurred in connection with claims asserted at the request of Subcontractor, including the prepayment of any retainage fee that may be requested. The intended result of this Agreement is to permit pass-through claims as authorized by Texas law, with the express understanding that Contractor's liability to Subcontractor on said claims is limited to the funds collected from Owner on the claims which Contractor asserts on behalf of Subcontractor, after deduction of Contractor's actual cost (such as expert

witness fees, attorneys' fees, Court costs, etc.) incurred in pursuing said claims.

**5.05 Proceeding with Work.** If Subcontractor and Contractor do not agree upon either (i) whether or not Subcontractor's written notice requesting extra compensation constitutes changed work or additional work beyond the original scope of the Subcontract Work, or (ii) the reasonable amount of extra compensation due for the changed or extra work, then Subcontractor shall proceed with the work in accordance with the instructions of Contractor. In such event, Subcontractor shall maintain and present to Contractor, in such form as Contractor may prescribe, an itemized accounting of costs, together with appropriate supporting data, for all extra labor, materials, and equipment expended at the Project site by Subcontractor for the changed or additional work. For changed or additional work beyond the scope of the original Subcontract Work, Subcontractor shall be entitled to recover, subject to the requirements for notice, all actual costs for labor, material, and equipment, expended at the Project site for the changed or additional work, minus the costs for any deleted work, plus a sum equal to the percentage amount allowed in the Prime Agreement for Subcontractor's overhead and profit. Subcontractor's overhead and profit shall be according to the requirements of the Prime Agreement.

## VI. INSURANCE AND INDEMNIFICATION

### **6.01 Insurance.**

**a. PRIOR TO STARTING THE SUBCONTRACT WORK** Subcontractor shall procure and maintain in force (i) statutory workers' compensation insurance for all Subcontractor's employees and/or workmen at the Project site performing the Subcontract Work and employer's liability insurance with \$1,000,000.00 coverage, (ii) commercial general liability insurance, (iii) business automobile liability insurance, (iv) umbrella insurance, and (v) such other insurance to the extent required by the Prime Agreement for the Subcontract Work. Subcontractor's commercial general liability, automobile liability, and umbrella insurance shall be primary and non-contributory; shall contain an endorsement listing the Owner and BTC as additional insured (CGL policy shall use endorsement CG 20 10 10 01 for Ongoing Operations and CG 20 37 10 01 for Completed Operations, or alternatively, endorsement CG 20 10 11 85, such that coverage is provided to the additional insured parties for completed operations) (Business Automobile Liability policy shall use endorsement CA2048 or equivalent); shall have a per project aggregate endorsement; and shall be written for not less than limits of liability as follows:

- (i) Worker's Compensation and Employers' Liability

Workers' Compensation

Worker's Compensation Statutory Limits

Employers' Liability

\$1,000,000.00 Each Accident

\$1,000,000.00 Disease-Policy Limit

- \$1,000,000.00 Disease Each Employee
- (ii) Commercial General Liability.
  - \$1,000,000.00 Each Occurrence
  - \$2,000,000.00 General Aggregate per Project
  - \$2,000,000.00 Products/ Completed Operations Aggregate
  - \$1,000,000.00 Personal and Advertising Injury
- (iii) Business Automobile Liability.
  - \$1,000,000.00 Combined Single Limit or
- (iii) Business Automobile Liability.

- \$1,000,000.00 Bodily Injury - Each Person
- \$1,000,000.00 Bodily Injury - Each Occurrence
- \$1,000,000.00 Property Damage - Per Accident

- (iv) Umbrella Liability.

Option A (no work 10'-0" or greater above ground, no work 3'-0" or greater below grade, and no cranes):

- \$3,000,000.00 Each Occurrence
- \$3,000,000.00 Aggregate

Option B (no cranes):

- \$5,000,000.00 Each Occurrence
- \$5,000,000.00 Aggregate

Option C (subcontract work includes use of a crane):

- \$10,000,000.00 Each Occurrence
- \$10,000,000.00 Aggregate

- (v) Pollution Liability.

- \$5,000,000.00 Each Occurrence

**b.** The commercial general liability policy shall contain a contractual liability endorsement, an endorsement listing BTC, as additional insured, the Owner as additional insured and a products/completed operations endorsement. Commercial general liability insurance may be arranged under a single policy for the full limits required, or by a combination of underlying policies with the balance provided by an umbrella liability policy. The Business Automobile Liability Policy shall contain an endorsement listing the Contractor as additionally insured and shall contain a waiver of subrogation endorsement in favor of Contractor and its employees. Subcontractor shall maintain the coverage listed above, including the additional insured coverage and the completed operations coverage, for a period of ten (10) years after final payment. Subcontractor's insurance coverage **shall not** include any of the following endorsements, excluding or limiting coverage:

- (i) Contractual Liability Limitation, CG 21 39;
- (ii) Amendment of Insured Contract Definition, CG 24 26;

- (iii) Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43;
- (iv) Limitation of Coverage to Designated Premises or Project, CG 21 44 07 98;
- (v) Exclusion-Damage to Work Performed by Subcontractors on Your Behalf, CG 22 94 or CG 22 95;
- (vi) Any type of Construction Defect Completed Operations exclusion;
- (vii) Any type of Punitive, Exemplary or Multiplied Damages exclusion; and/or
- (viii) Any type of Habitational, Residential, or Condominium Exclusion.

**c.** The Workers' Compensation Policy shall contain a waiver of subrogation endorsement in favor of Contractor and its employees. Subcontractor shall execute a joint agreement with Contractor, Texas DWC-85, stating that Subcontractor is an independent contractor and not an employee of Contractor.

**d.** Prior to starting the Subcontract Work, Subcontractor shall deliver to Contractor an original Certificate of Insurance, meeting statutory requirements, which evidences the coverages and the endorsements required herein and which states that the coverages afforded under the policies will not be canceled or terminated unless at least 30 days written notice is given to Contractor. If Subcontractor subcontracts any portion of the Subcontract Work, Subcontractor shall deliver to Contractor for each of Subcontractor's sub-subcontractors or employee leasing companies, an original Certificate of Insurance which evidences the same coverages and endorsements for workers' compensation insurance as required herein. Limits of coverage are the minimum acceptable limits, and should Subcontractor's policy provide additional limits of coverage above the minimum, then Contractor shall be afforded the full limits of coverage. All insurance companies providing coverage to Subcontractor pursuant to the requirements of this Agreement shall have a minimum Best's Rating of A- and a Financial Size Category listing of no lower than VII, both as provided by A.M. Best Company, Inc. Upon request from Contractor, Subcontractor shall deliver a copy of all policies of insurance required herein.

**e.** Subcontractor shall be solely responsible for insuring Subcontractor's equipment against physical loss or damage of any kind, and shall be responsible for the deductible portion of each claim covered by the Builder's Risk Insurance procured by either the Owner or Contractor.

**f.** SUBCONTRACTOR WAIVES ANY CLAIM AGAINST CONTRACTOR, OWNER OR THEIR EMPLOYEES AND OFFICERS, FOR ANY AND ALL LOSSES, INJURIES, DAMAGES OR EXPENSES WHICH ARE COVERED BY POLICIES OF INSURANCE, EXCEPT SUCH RIGHTS AS SUBCONTRACTOR MAY HAVE TO THE PROCEEDS OF SUCH INSURANCE.

**g.** The requirements for additional insured coverage contained in this Agreement are intended to comply with the requirements of Section 151.104 of the TEXAS INSURANCE CODE. Said requirements shall be construed to comply with the requirements of Texas Law and any provision in the requirements



for additional insured coverage contained in this Agreement or the Prime Agreement that are determined to expand or restrict the permissible scope of additional insured coverage allowed by Texas law shall be disregarded and said requirements shall be read to require additional insured coverage to the fullest extent permitted by Texas law.

## **6.02 INDEMNIFICATION.**

**a. ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED UNDER TEXAS LAW, SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR, THE OWNER, AND THEIR OFFICERS, PARTNERS, REPRESENTATIVES, AND EMPLOYEES (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, EXPENSES (INCLUDING ANY ARBITRATION OR LITIGATION EXPENSES), AND/OR ATTORNEYS' FEES ARISING OUT OF, RELATED TO, OR CONNECTED WITH, THE PERFORMANCE, OR FAILURE IN PERFORMANCE, OF THE SUBCONTRACT WORK UNDER THIS AGREEMENT, EVEN IF ANY SUCH CLAIM, DAMAGE, LOSS, EXPENSE, AND/OR ATTORNEYS' FEES IS CAUSED BY A NEGLIGENT ACT OR OMISSION BY ANY OF THE INDEMNIFIED PARTIES. THE EXPRESSED INTENTION OF THE PARTIES IS THAT SUBCONTRACTOR'S INDEMNITY HEREIN WILL SURVIVE THE TERMINATION OF THIS AGREEMENT AND WILL INDEMNIFY AND PROTECT THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, BUT ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED UNDER TEXAS LAW.**

**b.** In any and all claims against any of the Indemnified Parties by an employee of Subcontractor, or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Paragraph 6.02 shall not be limited in any way by any limitation or bar under the Texas Workers' Compensation Act, or other employee benefit acts.

## **VII.** **BONDS AND WARRANTIES**

**7.01 Performance/Payment Bonds.** If required by Contractor, a Performance Bond and a Payment Bond in a form satisfactory to Contractor shall be furnished by Subcontractor in the full amount of the price of the Subcontract Work as set forth herein. If Contractor requires such Bonds after this Agreement is issued, the cost thereof shall be paid by Contractor as a change to the Subcontract Work; otherwise it

shall be included in the Subcontract Price. This obligation shall continue throughout the term of this Agreement and may be required at any time during the performance of the Subcontract Work. These bonds shall be furnished by a certified company on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), current as of the date the bonds are requested, with sufficient underwriting limitations published therein to cover the penal sum (face amount) of the bonds and shall have the following minimum requirements: Best's Rating of B+ to B++ and a Financial Size Category listing of no lower than IX (9), or, Best's Rating of A- to A++ and a Financial Size Category listing of no lower than IV (4). Bonds shall be executed and approved by Contractor prior to beginning work.

**7.02 Conformance with Contract Documents.** Subcontractor warrants to the Owner and Contractor that all the Subcontract Work shall be performed in a good and workmanlike manner and shall be free from any and all defects due to faulty workmanship and/or materials and shall comply with all requirements of the applicable Contract Documents. Subcontractor shall promptly remove, replace, correct, and/or repair any portion of the Subcontract Work that Contractor or the Owner determines is defective or is not in compliance with the applicable Contract Documents. Subcontractor further agrees to execute any special guarantees or warranties as required by the terms of the Contract Documents and provide all close-out documents required by the Contract Documents in connection with the Subcontract Work, within 30 days of Substantial Completion as declared by the Owner and Architect, and as a condition precedent to final payment. Failure to submit all close-out documents required by the Contract Documents in connection with the Subcontract Work, within 30 days of Substantial Completion as declared by the Owner and Architect will result in the assessment of Liquidated Damages as defined in Article 3.04. All required warranties will be written so that the effective date is from the "Date of Final Completion" and the duration is for 1 year. The date of Final Completion will be issued by the Owner and Architect upon submission and acceptance of all required close-out documentation. All documentation requiring an effective date shall be dated as "DATE OF FINAL COMPLETION AS ESTABLISHED BY OWNER AND ARCHITECT" upon submission for review.

**7.03 Payments of Laborers and Materialmen.** Subcontractor warrants that all laborers, materialmen, and sub-subcontractors, at any tier, providing labor, equipment, or materials for the Subcontract Work will be paid such that neither the Owner, nor Contractor, nor Owner's property, nor Contractor's Surety will be subject to any claims, liens, or encumbrances.

## **VIII.** **SUPPLEMENTATION** **OF WORK AND TERMINATION**

**8.01 Supplementation by Contractor.** Should Subcontractor fail at any time to supply a sufficient number of properly skilled workmen and/or sufficient materials and/or equipment of the proper quantity and/or quality, as determined by Contractor in its sole discretion, or fail in any respect to

prosecute the Subcontract Work with promptness and diligence, or fail to promptly correct defective Subcontract Work or fail in the performance of any of the obligations contained in the applicable Contract Documents, Contractor may, at its option without notice, provide such labor, materials and/or equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Subcontractor under this Agreement. If such cost, loss, and damage exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

**8.02 Termination of Subcontract for Default.** If Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and/or quantity, or fail in any respect to prosecute the Subcontract Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of Contractor or other subcontractors, or fail in performance of any of the covenants contained in the applicable Contract Documents, or be unable to meet its debts as they mature, Contractor may, at its option, at any time terminate the Subcontract Work for Subcontractor's default by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take possession of the materials and equipment of Subcontractor at the Project site, and through himself or others provide labor, equipment and materials to prosecute and complete the Subcontract Work on such terms and conditions as shall be deemed necessary. Contractor shall deduct the cost thereof, including without restriction all charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of Subcontractor's failure to perform, from any money then due or thereafter to become due to Subcontractor under this Agreement. If such completion cost exceeds the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

**8.03 Termination for Convenience.** Contractor may, at its option, at any time, terminate without Subcontractor's default the whole or any part of the Subcontract Work under this Agreement for the convenience of Contractor. Subcontractor agrees that upon any such termination, Subcontractor's sole remedy shall be payment of the lesser of: (i) the appropriate share of the amount which Contractor is paid under the Prime Agreement for the Subcontract Work properly completed by Subcontractor as of the date of such termination; or (ii) the value of all work properly performed by Subcontractor, less all payments Subcontractor has previously received for the Subcontract Work performed. The value shall not exceed Subcontractor's actual costs for labor, materials, and equipment, plus fifteen percent (15%) for profit and overhead. Subcontractor waives all other claims for damages, including lost or anticipated profits, arising from or related to any such termination by Contractor.

**8.04 Payments After Termination.** If Contractor terminates the Subcontract Work under this Agreement pursuant to paragraph 8.02 above, then Subcontractor shall not be entitled to any further payments under this Agreement until the Subcontract Work has been completed and accepted by the Owner, and payment therefor has been received by Contractor

from the Owner for any money then due or thereafter to become due to Subcontractor under this Agreement. If the cost to complete the Subcontract Work (plus all charges, expenses, losses, costs, and attorneys' fees recoverable under this Agreement) exceeds the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand. In the event Contractor terminates the Subcontract Work under this Agreement for default, as provided in paragraph 8.02, and Subcontractor is subsequently found not to be in default, then Contractor's termination for default shall be deemed for all purposes to be a termination for convenience as provided in paragraph 8.03.

## **IX. DISPUTE RESOLUTION**

**9.01 Dispute Resolution.** Except as provided herein, all claims, disputes and controversies arising out of or relating to the Subcontract Work, or this agreement, including claims for extra work or changed conditions to or related to the Subcontract Work, shall be decided pursuant to Texas law by a State District or County Court in Tarrant County, Texas. BOTH CONTRACTOR AND SUBCONTRACTOR AGREE TO WAIVE TRIAL BY JURY. Except, however, a claim for contribution and/or indemnity shall be asserted by the Contractor and decided by the Court, in the suit in which claims are brought against the Contractor for which the Contractor seeks contribution and/or indemnity from the Subcontractor; and a claim by the Subcontractor against the Contractor in which the Contractor asserts the claim, in whole or in part, against the Owner shall be asserted and resolved pursuant to the claims and dispute resolution procedures in the Prime Agreement. If the forum for, or procedure for resolution of, a dispute or controversy between the Contractor and Subcontractor is contested by either party, the issue shall be submitted to a court of competent jurisdiction in Tarrant County, Texas, and all other proceedings shall be stayed until the determination by the Court.

**9.02 Claims under Prime Agreement.** In the event the Contractor and Owner or others arbitrate or litigate matters relating to Subcontract Work, it shall be the responsibility of the Subcontractor to prepare and present the Contractor's case, to the extent the proceedings are related to the Subcontract Work under this Agreement, and Subcontractor shall be bound by the result of such arbitration or litigation to the same degree as Contractor.

**9.03 Continued Performance Pending Dispute Resolution.** Subcontractor shall carry on the Subcontract Work and maintain Subcontractor's progress during any litigation proceedings.

**9.04 Statute of Repose:** Subcontractor and Contractor agree that for purposes of this Agreement the statute of repose shall commence to run thirty (30) days after the final completion of the entire Project, unless Contractor has agreed to a shorter period in the Prime Agreement, in which case the period provided in the Prime Agreement shall control.

## **X. ADDITIONAL OBLIGATIONS**

**10.01 Additional Obligations of Subcontractor.** In addition to the other engagements of Subcontractor hereunder, Subcontractor hereby agrees that with regard to this Agreement Subcontractor shall:

**a.** Not discriminate against any employee or applicant for employment because of race, creed, color, age, sex, national origin, or disability.

**b.** Not assign rights under this Agreement or any amounts due or to become due hereunder without the written consent of Contractor; nor subcontract the whole of any Subcontract Work without the written consent of Contractor; nor further subcontract portions of any Subcontract Work without written notification to Contractor.

**c.** Promptly submit shop drawings and samples as requested by Contractor in order to carry on the Subcontract Work efficiently without delay in the progress of the Project. Subcontractor shall resubmit, within three (3) working days, any shop drawings or submittals returned for correction. All shop drawings, submittals, and samples are to be checked, signed, and dated by a duly authorized representative of Subcontractor, certifying that the same meets all requirements of the Contract Documents and is in accordance with the construction plans and specifications.

**d.** Comply with all Federal, State, and local laws and ordinances relating to construction of buildings, or structures, or improvements and give adequate notices relating to the Subcontract Work to the proper authorities, and secure and pay for all necessary licenses or permits to carry on the Subcontract Work as described in the applicable Contract Documents.

**e.** Comply with Federal and State laws relating to reporting and payment of (i) wages (including but not limited to, the Davis Bacon Act if applicable), (ii) federal and state payroll taxes on wages, including but not limited to, Federal Income Tax withholding provisions of the Internal Revenue Code, Federal Insurance Contribution Act (FICA) payments, and Federal Unemployment Tax Act (FUTA) payments, and (iii) applicable state unemployment tax payments. Comply with all prevailing wage rates as required in the Contract Documents.

**f.** Comply with all Federal, State, and local laws, including, but not limited to, the rules and regulations promulgated pursuant to statute related to the Texas Workers' Compensation Act; Consolidated Omnibus Budget Reconciliation Act (COBRA); Immigration Reform and Control Act of 1986; Consumer Credit Protection Act; Title 3, Title 7 of the 1964 Civil Rights Act; Age Discrimination Employment Act; Employees Retirement Income Security Act (ERISA); and Occupational Safety and Health Act of 1970 (OSHA), the Construction Safety Act of 1969, and the Clean Water Act, with all regulations promulgated by the Environmental Protection Agency including Storm Water Pollution Prevention Plan requirements. Subcontractor shall defend and be responsible for all citations, fines, and penalties and shall indemnify and hold Contractor and all other subcontractors harmless from any loss sustained by reason of

any failure to so comply. As an independent contractor, Subcontractor is exclusively responsible for compliance with these regulations and laws and for the safety of Subcontractor's employees.

**g.** Maintain a competent person as defined in 29 CFR 1926.32(f), on the job site at all times Work is being performed by this Subcontractor.

**h.** Adopt a Drug Free Workplace Program equal to or exceeding Contractor's Drug Free Workplace Program, including Subcontractor's pre-employment and post-accident testing of employees and Subcontractor's permanent removal of employees failing tests or refusing to submit to tests.

**i.** Exercise every precaution necessary to eliminate asbestos and/or lead-containing materials from any of the materials incorporated in the Subcontract Work. If asbestos fibers or lead contaminants are found in materials associated with the Subcontract Work, Subcontractor shall be responsible for determining the source of and removing all materials containing asbestos fiber or lead contaminants.

**j.** Promptly provide Contractor notice of any condition which could increase Contractor's cost of the Subcontract Work or Contractor's liability for claims or damages, to allow Contractor to confirm the condition and mitigate damages arising from the condition. **SUBCONTRACTOR WAIVES ALL CLAIMS AND DAMAGES AND FULLY RELEASES CONTRACTOR FROM LIABILITY FOR ANY CLAIMS OR DAMAGES WHICH ARISE PRIOR TO SUBCONTRACTOR'S NOTICE TO CONTRACTOR OF ANY SUCH CONDITION.**

**k.** This project is exempt from taxes in accordance with the Owner's Tax-Exempt status.

**l.** There is the potential for numerous existing underground utilities to be present at the site. Known utilities are either (1) shown on the contract documents, or (2) have been located by a private utility locate company. A copy of the drawing showing the locations of the known existing utilities is located in the job site office trailer. If Subcontractor, or any sub-subcontractor at any tier, damages a known utility, the cost to repair the damage will be deducted from the subcontract amount. Subcontractor shall expose and verify location of all known, or suspected, underground utilities, within a reasonable area of the Work, prior to starting the Work. If such cost exceeds the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

**m.** There will be **NO** electrical "hot work" without specific review by the BTC Safety Director prior to the beginning of the Work. Subcontractor shall be required to submit a task specific JHA, for review, for each instance that "hot work" is required to complete the Subcontract Work.

**n.** Equipment/Man Lifts are not allowed on any foundation/slab without written approval by Contractor. Any damages resulting from equipment placed on a foundation/slab will be repaired at Subcontractor's expense.

**o.** Subcontractor acknowledges Exhibit A for a listing of drawings, specifications, and addenda on which the Subcontract Agreement is based. Any use Contractor may allow of Contractor's digital documents on the Autodesk Build platform or other similar system and any design files furnished to Subcontractor in Revit, AutoCAD, or other similar format is solely for the Subcontractor's convenience and do not in any way replace the contract documents listed in Exhibit A of the Subcontract Agreement. Subcontractor shall promptly notify Contractor of any discrepancies found between Documents listed in Exhibit A and any documents Subcontractor is using for convenience and obtain written authorization from Contractor prior to proceeding with anything that is different than what is shown in the documents listed in Exhibit A. Subcontractor shall also refer to and follow the terms of any Revit file or AutoCAD file release form issued by the design team for the same files, Subcontractor is responsible for obtaining design team releases prior to use of design document files, releases may be furnished to Subcontractor upon written request. Furthermore, Subcontractor is to refer to and follow the terms of the Prime Agreement for any additional requirements that pertain to digital document usage.

**p.** Subcontractor acknowledges and agrees to comply with Exhibit B - Criminal History Background Checks and will comply with obtaining a criminal history background check utilizing the Fingerprint-based Applicant Clearinghouse of Texas.

**q.** Subcontractor shall require all construction workers, whether the Subcontractor's own forces, or the forces of a sub-subcontractor at any tier, to wear identification tags on the front of their persons during all times that they are on the Owner's property. Such identification tags shall provide identification of the construction worker by a number, name and photo of person in a typeface large enough to be seen from a reasonable distance.

**r.** Subcontractor shall require all workers, whether subcontractor's own forces or the forces of a sub-subcontractor, while on the Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using any illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interaction of any nature whatsoever with students, employees, administrators, Board Member, or parent, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for the Owner's students or employees, BTC employees, parents and/or the general public. All areas of the campus, other than the defined construction area shall be off limits to the subcontractor's forces, unless their work assignment requires otherwise and specific permission has been granted by BTC. BTC will make the final determination if a subcontractor has violated this requirement and will remove any subcontractor, or subcontractor's employee, from the site in its sole discretion.

**s.** Subcontractors shall comply with safety directives, if any, issued by the Owner and Construction

Manager. Each subcontractor is fully responsible for all safety matters applicable or related to subcontractor's work. All subcontractors on site are required to comply with OSHA general duty clause 29 USC 654 in addition to any other requirements. The Owner, Architect, and Construction Manager assume no safety responsibilities or obligations of any subcontractor nor any duty to notify subcontractor of any safety issue or violation.

**t.** All persons on site are required to wear safety vests, hard hats, and other PPE as appropriate, as required to comply with OSHA general duty clause 29 USC 654(b), and/or as required by Construction Manager.

**u.** Subcontractor will provide all extended warranties and/or guarantees required by the contract documents, whether specified to be provided by a manufacturer or written by subcontractor. Subcontractor shall provide warranties specified even if not available from a lower tier subcontractor or manufacture. In the event the specified warranties are not available from a lower tier subcontractor or manufacture, then subcontractor will be responsible to provide warranties and/or guarantees in a form acceptable to the Owner.

**v.** In accordance with Article 5.02 any additional work outside the scope of this Subcontract Agreement must be approved in writing by Contractor prior to Subcontractor proceeding with work. If the final cost cannot be determined at the time of approval to proceed, then the actual cost must be submitted within two weeks of completing the work. Any additional work including remedial work resulting in backcharges to other Subcontractors must be approved in writing by Contractor prior to proceeding with the work. Contractor, in its sole discretion, shall determine final, actual costs due to Subcontractor, if the actual cost was not determined at the time Subcontractor received written notice to proceed, and the final, actual cost was not submitted within two weeks of completing the work.

**w.** Electronic submittals will be required in addition to any "hard copies".

**x.** Warranties, as-built drawings, O&M manuals, etc., (Close-out Documents) are considered part of the Work. No application for payment indicating the Work has reached 100% completion will be accepted until all Close-out Documents have been received, reviewed, and accepted by the Owner.

**x.** Subcontractor acknowledges and agrees to comply with Exhibit C - Labor Standards Provisions Applicable to Federally Financed and Assisted Construction, Qualified School Construction Bonds (QSCB), Qualified Zone Academy Bonds (QZAB), Davis-Bacon Act Payroll Reporting or Prevailing Wage Rate Payroll Reporting. Certified payroll reports shall be submitted on Payroll Form WH-347 for the pay period corresponding to every Application for Payment. Certified payroll reports shall be submitted by the end of the week following the pay period corresponding to the Application for Payment.

**XI.**  
**MISCELLANEOUS**

**11.01 Notices.** All notices required to be given under this Agreement shall be deemed delivered when transmitted via facsimile during normal business hours to the following facsimile number, provided the notice is also transmitted via e-mail on the same day during normal business hours to the following e-mail address:

CONTRACTOR:  
BTC  
P.O. Box 151829  
Fort Worth, Texas 76108-5829  
Facsimile: (817) 467-5619  
E-Mail: info@btcbuilds.com

SUBCONTRACTOR:  
[Subcontractor's Name]  
[Subcontractor's Street Address]  
[Subcontractor's City, State, Zip]  
Facsimile: [Subcontractor's Fax #]  
E-Mail: [Add Desired E-Mail]

Notices transmitted via facsimile or e-mail after normal business hours shall be deemed delivered the following business day.

**11.02 Conflicts in Terms.** In the event there is a conflict between the terms of this Agreement and the other Contract Documents, the terms of this Agreement shall control over the other Contract Documents, unless the terms of the Prime Agreement impose a more stringent requirements upon Contractor with regard to the Subcontract Work, in which case the more stringent terms shall control.

**11.03 Attorneys' Fees.** In the event that Contractor is required to retain the services of an attorney to enforce this Agreement and/or the Unconditional Guaranty, or to defend against any cause of action, claim, or counterclaim brought by Subcontractor on which Subcontractor does not prevail, then Contractor shall be entitled to recover the attorneys' fees and costs incurred, in addition to other remedies to which Contractor is entitled under Texas law. In the event that Subcontractor is required to retain the services of an attorney to enforce this Agreement and Subcontractor prevails in asserting a valid claim under this Agreement, then Subcontractor shall be entitled to recover attorneys' fees and costs incurred, in addition to other remedies to which Subcontractor is entitled under Texas law.

**11.04 No Waiver.** Contractor's waiver of any right hereunder in one or more instances shall not constitute a waiver as to future enforcement of such right (by way of example and without limitation, waiver of right to receive releases with one or more payment applications shall not constitute a waiver of the right to receive releases with future payment applications).

**11.05 Unconditional Guaranty.** To induce Contractor to enter into this Agreement with Subcontractor and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Guarantor hereby unconditionally, irrevocably, and absolutely, jointly and severally guaranties the performance of each and every obligation of Subcontractor, including warranties, under this Agreement and/or any modifications or Change Orders issued pursuant to the terms of this Agreement. The obligation of the Guarantor shall be performable upon demand by Contractor and shall be unconditional, irrespective of any alleged irregularity or equitable discharge of any Surety. Guarantor hereby waives all diligence, presentment, demand, and protest, and agrees to fully and faithfully perform Subcontractor's obligations under this Agreement upon demand by Contractor. Guarantor further agrees that Contractor may demand performance of the obligations under this Agreement without any obligation by Contractor to first: (a) proceed against Subcontractor; (b) proceed against any surety bond or exhaust any collateral held by Contractor as security for performance of Subcontractor's obligations guaranteed hereby; or (c) pursue any remedy it may now have or hereafter have against Subcontractor. Guarantor further agrees that at any time, without notice to Guarantor, Contractor and Subcontractor may agree to: (a) extend the time for Subcontractor's performance or compliance within any covenant, agreement, or warranty under this Agreement; (b) amend or change the scope of any Subcontract Work by Change Order; or (c) alter or amend any time for payment or amounts of payment, whether such payments are partial payments or final payment; all without affecting the liability and obligation of Guarantor. Guarantor hereby acknowledges that the withdrawal from, termination of, or restructuring of, any ownership interest that Guarantor may have in Subcontractor, shall not alter, affect, or in any way limit the obligations of the Guarantor hereunder. Guarantor further consents and agrees that this guaranty agreement shall be subject to and governed by the terms of the dispute resolution provisions in this Agreement and that any claims by either Guarantor or Contractor arising out of or relating to the obligations of this guaranty agreement shall be subject to the dispute resolution clause in this Agreement. Guarantor hereby agrees that in the event of the termination, liquidation, or dissolution of Subcontractor, this unconditional guaranty shall continue in full force and effect. The obligations of Guarantor shall not terminate until Subcontractor has fully performed all obligations under this Agreement, including any and all modifications thereof.

EXECUTED in Tarrant County, Texas effective as of the date stated above.

CONTRACTOR:

BTC  
BY BTC GP, LLC., ITS GENERAL PARTNER

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

Sammy C. Martin, its President

SUBCONTRACTOR:

**SUBCONTRACTORS NAME**

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

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

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

GUARANTOR:

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

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



**Insurance Memorandum**

TO: Subcontractors

FROM: Sammy C. Martin, President

SUBJECT: Insurance Requirements

This memorandum will detail BTC insurance requirements for subcontractors. In accordance with Article VI, Section 6.01 of your Subcontract Agreement listed as follow:

**6.01 Insurance**

a. PRIOR TO STARTING THE SUBCONTRACT WORK Subcontractor shall procure and maintain in force (i) statutory workers’ compensation insurance for all Subcontractor’s employees and/or workmen at the Project site performing the Subcontract Work and employer’s liability insurance with \$500,000.00 coverage, (ii) commercial general liability insurance, (iii) business automobile liability insurance, (iv) umbrella insurance, and (v) such other insurance to the extent required by the Prime Agreement for the Subcontract Work. Subcontractor’s commercial general liability, automobile liability, and umbrella insurance shall be primary and non-contributory; shall contain an endorsement listing the Owner and BTC as additional insured (CGL policy shall use endorsement CG 20 10 10 01 for Ongoing Operations and CG 20 37 10 01 for Completed Operations, or alternatively, endorsement CG 20 10 11 85, such that coverage is provided to the additional insured parties for completed operations) (Business Automobile Liability policy shall use endorsement CA2048 or equivalent); shall have a per project aggregate endorsement; and shall be written for not less than limits of liability as follows (refer to subcontract for project specific limit requirements):

(i) Worker’s Compensation and Employers’ Liability

Workers’ Compensation

Worker’s Compensation Statutory Limits

Employers’ Liability

- \$1,000,000.00 Each Accident
- \$1,000,000.00 Disease-Policy Limit
- \$1,000,000.00 Disease Each Employee

(ii) Commercial General Liability.

- \$1,000,000.00 Each Occurrence
- \$2,000,000.00 General Aggregate per Project
- \$2,000,000.00 Products/ Completed Operations Aggregate



Insurance Memorandum

\$1,000,000.00 Personal and Advertising Injury

(iii) Business Automobile Liability.

\$1,000,000.00 Combined Single Limit or,

(iii) Business Automobile Liability.

\$1,000,000.00 Bodily Injury - Each Person

\$1,000,000.00 Bodily Injury - Each Occurrence

\$1,000,000.00 Property Damage - Per Accident

(iv) Umbrella Liability.

Option A (no work 10'-0" or greater above ground, no work 3'-0" or greater below grade, and no cranes):

\$3,000,000.00 Each Occurrence

\$3,000,000.00 Aggregate

Option B (no cranes):

\$5,000,000.00 Each Occurrence

\$5,000,000.00 Aggregate

Option C (subcontract work includes use of crane):

\$10,000,000.00 Each Occurrence

\$10,000,000.00 Aggregate

(v) Pollution Liability.

\$5,000,000.00 Each Occurrence

- b. The commercial general liability policy shall contain a contractual liability endorsement, an endorsement listing BTC, as additional insured, the Owner as additional insured and a products/completed operations endorsement. Commercial general liability insurance may be arranged under a single policy for the full limits required, or by a combination of underlying policies with the balance provided by an umbrella liability policy. The Business Automobile Liability Policy shall contain an endorsement listing the Contractor as additionally insured and shall contain a waiver of subrogation endorsement in favor of Contractor and its employees. Subcontractor shall maintain the coverage listed above, including the additional insured coverage and the completed operations





**Insurance Memorandum**

coverage, for a period of ten (10) years after final payment. Subcontractor's insurance coverage **shall not** include any of the following endorsements, excluding or limiting coverage:

- (i) Contractual Liability Limitation, CG 21 39;
  - (ii) Amendment of Insured Contract Definition, CG 24 26;
  - (iii) Exclusion-Explosion, Collapse and Underground Property Damage Hazard, CG 21 42 or CG 21 43;
  - (iv) Limitation of Coverage to Designated Premises or Project, CG 21 44 07 98;
  - (v) Exclusion-Damage to Work Performed by Subcontractors on Your Behalf, CG 22 94 or CG 22 95;
  - (vi) Any type of Construction Defect Completed Operations exclusion;
  - (vii) Any type of Punitive, Exemplary or Multiplied Damages exclusion; and/or
  - (viii) Any type of Habitational, Residential, or Condominium Exclusion.
- c. The Workers' Compensation Policy shall contain a waiver of subrogation endorsement in favor of Contractor and its employees. Subcontractor shall execute a joint agreement with Contractor, Texas DWC-85, stating that Subcontractor is an independent contractor and not an employee of Contractor.
- d. Prior to starting the Subcontract Work, Subcontractor shall deliver to Contractor an original Certificate of Insurance, meeting statutory requirements, which evidences the coverages and the endorsements required herein and which states that the coverages afforded under the policies will not be canceled or terminated unless at least 30 days written notice is given to Contractor. If Subcontractor subcontracts any portion of the Subcontract Work, Subcontractor shall deliver to Contractor for each of Subcontractor's sub-subcontractors or employee leasing companies, an original Certificate of Insurance which evidences the same coverages and endorsements for workers' compensation insurance as required herein. Limits of coverage are the minimum acceptable limits, and should Subcontractor's policy provide additional limits of coverage above the minimum, then Contractor shall be afforded the full limits of coverage. All insurance companies providing coverage to Subcontractor pursuant to the requirements of this Agreement shall have a minimum Best's Rating of A- and a Financial Size Category listing of no lower than VII, both as provided by A.M. Best Company, Inc. Upon request from Contractor, Subcontractor shall deliver a copy of all policies of insurance required herein.
- e. Subcontractor shall be solely responsible for insuring Subcontractor's equipment against physical loss or damage of any kind, and shall be responsible for the deductible portion of each claim covered by the Builder's Risk Insurance procured by either the Owner or Contractor.
- f. **SUBCONTRACTOR WAIVES ANY CLAIM AGAINST CONTRACTOR, OWNER OR THEIR EMPLOYEES AND OFFICERS, FOR ANY AND ALL LOSSES, INJURIES, DAMAGES OR EXPENSES WHICH ARE COVERED BY POLICIES OF INSURANCE, EXCEPT SUCH**



**Insurance Memorandum**

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RIGHTS AS SUBCONTRACTOR MAY HAVE TO THE PROCEEDS OF SUCH INSURANCE.

- g.** The requirements for additional insured coverage contained in this Agreement are intended to comply with the requirements of Section 151.104 of the TEXAS INSURANCE CODE. Said requirements shall be construed to comply with the requirements of Texas Law and any provision in the requirements for additional insured coverage contained in this Agreement or the Prime Agreement that are determined to expand or restrict the permissible scope of additional insured coverage allowed by Texas law shall be disregarded and said requirements shall be read to require additional insured coverage to the fullest extent permitted by Texas law.

Please have your insurance agent issue BTC an original Accord Certificate of Insurance, documenting the above items as soon as possible before beginning work at the project. (A sample certificate of insurance is enclosed that you may forward to your agent). **This Certificate of Insurance (yours and your subcontractors) and a copy of the executed Subcontract Agreement must be in our business office before you may begin work at the jobsite.** Failure to comply may cause BTC to cancel your Subcontract Agreement.

**\*\*\* INSURANCE LIMITS BASED ON SUBCONTRACT AGREEMENT\*\*\***

**CERTIFICATE OF LIABILITY INSURANCE**

Date (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  <b>YOUR INSURANCE COMPANY</b>	CONTACT NAME:	
	PHONE:	FAX:
	EMAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: AMERISURE INS CO.	19488
<b>INSURED</b>  <b>SUBCONTRACTOR NAME</b>	INSURER B: AMERISURE MUTUAL INS CO.	
	INSURER C: COMMERCE & INDUSTRY INS CO.	
	INSURER D: TEXAS MUTUAL INS CO.	
	INSURER E:	
	INSURER F:	

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSUR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<b>General Liability</b>	X	X		9/1/15	9/1/16	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> Per project aggregate applies						PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC								
B	<b>Automobile Liability</b>	X	X		9/1/2015	9/1/2016	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000 <b>OR</b>
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$ 1,000,000
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$ 1,000,000
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	\$ 1,000,000
C	<b>UMBRELLA LIAB</b>	X			9/1/2015	9/1/2016	EACH OCCURRENCE	\$ 10,000,000
	<b>EXCESS LIAB</b>						AGGREGATE	\$ 10,000,000
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$							
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	Y/N	N/A	X	9/1/2015	9/1/2016	<input checked="" type="checkbox"/> W/C STATUTORY LIMITS <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER INCLUDED? (MANDATORY IN NH)							\$ 1,000,000
	If yes, describe under							\$ 1,000,000
								\$ 1,000,000

**SAMPLE**

**DESCRIPTION OPERATIONS/LOCATIONS/VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**

Commercial general liability, automobile liability, and umbrella insurance are primary and non-contributory and include the following endorsements listing the certificate holder as additional insured (CGL policy shall use endorsement CG 20 10 10 01 for Ongoing Operations and CG 20 37 10 01 for Completed Operations, or alternatively, endorsement CG 20 10 11 85, such that coverage is provided to the additional insured parties for completed operations) (Business Automobile Liability policy shall use endorsement CA2048 or equivalent); Waiver of subrogation in favor of Certificate holder is included on automobile liability and worker's compensation policies. All policies include 30 day notice of cancellation in favor of certificate holder (10 days for reason of non payment).

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
BTC P.O. BOX 151829 FORT WORTH, TEXAS 76108	All policies include 30 day notice of cancellation in favor of certificate holder (10 days for reason of non payment). AUTHORIZED REPRESENTATIVE
ALL PROJECT OWNERS AND ALL OTHER PARTIES REQUIRED BY THE PRIME CONTRACT	

**SUBCONTRACTOR PAYMENT BOND**

**THE STATE OF TEXAS**    §  
    §                                         **KNOW ALL MEN BY THESE PRESENTS THAT:**  
**COUNTY OF TARRANT**  §

We, \_\_\_\_\_ [SUBCONTRACTOR] (the “Principal”) and \_\_\_\_\_ [SURETY] (the “Surety”), are held and firmly bound unto BTC (the “Contractor”), a Texas limited partnership, in the sum of \_\_\_\_\_ Dollars (\$) [SUBCONTRACT AMOUNT] for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a subcontract agreement with Contractor dated \_\_\_\_\_ [SUBCONTRACT DATE] (the “Subcontract”) to perform certain construction on the \_\_\_\_\_ [PROJECT], a copy of which Subcontract is incorporated by reference and made a part of this agreement for all purposes.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall (i) promptly pay all claims for labor performed, materials furnished or fabricated, or equipment rented or purchased, in relation to the Subcontract; (ii) defend, indemnify, hold the Contractor harmless from and against all losses and expenses for liens or claims on Contractor's bond (“bond claims”) arising out of such claims for labor, materials or equipment; and (iii) pay the Contractor on demand all sums it shall have paid to discharge any such lien or bond claim; then this obligation shall be void; otherwise, it shall remain in full force and effect.

Principal agrees to furnish the Contractor full and correct statements of the costs of labor and materials actually used in performing the Subcontract.

Principal and Surety jointly agree to defend, indemnify and hold the Contractor harmless against claims for labor performed or materials furnished in connection with the Subcontract and against all losses and expenses on account of liens or bond claims filed in connection therewith, and to pay to Contractor all sums it shall have paid to discharge such liens or bond claims or to defend against such liens or bond claims.

Surety and Principal further agree that any alterations which may be made in the terms of the Subcontract or in the work to be done thereunder, or the giving by the Contractor of any extension of time for the performance of the Subcontract, or Contractor’s payment or partial payment of any sums to Principal under the Subcontract, or any other forbearance on the part of either the Contractor or the Principal to the other, shall not in any way release the Surety, its administrators, successors or assigns, from their obligations or liability hereunder. Notice to the Surety of any such alteration, extension, forbearance or payment to Principal is hereby expressly waived by the Surety.

It is further agreed by the Surety and the Principal that this bond shall inure to the benefit of and may be directly sued upon by any person, firm, or corporation to recover for labor performed or material furnished under the Subcontract; and shall be construed to require the Surety and the Principal to pay direct to any person, firm, or corporation performing labor or furnishing material in connection with the Subcontract, any indebtedness for such labor or material.

IN TESTIMONY WHEREOF, the parties hereto have subscribed their names in \_\_\_\_\_ County, \_\_\_\_\_ State, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

[SUBCONTRACTOR]

Attest: \_\_\_\_\_  
Witness

\_\_\_\_\_(Seal)  
Principal

[SURETY]

Attest: \_\_\_\_\_  
Witness

\_\_\_\_\_(Seal)  
Surety

**SUBCONTRACTOR'S PERFORMANCE BOND**

**THE STATE OF TEXAS    §  
   §            KNOW ALL MEN BY THESE PRESENTS THAT:  
COUNTY OF TARRANT   §**

We, \_\_\_\_\_ [SUBCONTRACTOR], (the “Principal”), and \_\_\_\_\_ [SURETY] (the “Surety”), are held and firmly bound unto BTC (the “Contractor”), a Texas limited partnership, in the sum of \_\_\_\_\_ Dollars(\$ \_\_\_\_\_).[SUBCONTRACT AMOUNT] for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a subcontract agreement with Contractor dated \_\_\_\_\_[SUBCONTRACT DATE] (the “Subcontract”) to perform certain construction on the \_\_\_\_\_[PROJECT], a copy of which Subcontract is incorporated by reference and made a part of this agreement for all purposes.

NOW THEREFORE, the condition of this obligation is such that if the Principal (i) shall faithfully perform the Subcontract in every particular and without fraud, defalcation or delay; and (ii) shall satisfy all claims and demands related to the performance of the Subcontract, and (iii) shall fully indemnify and save harmless Contractor from all cost and damage which Contractor may suffer by reason of Principal’s failure to faithfully perform the Subcontract in every particular and (iv) shall fully reimburse and repay the Contractor all costs and expenses which the Contractor may incur in making good any such default, and (v) shall pay all costs, expenses and attorney’s fees which Contractor may incur in the defense of any suits arising out of the performance of the Subcontract or in the prosecution or defense of any suits arising out of the breach or default of Principal or Surety under the Subcontract or under this bond, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

Surety and Principal further agree that any alterations which may be made in the terms of the Subcontract or in the work to be done thereunder, or the giving by the Contractor of any extension of time for the performance of the Subcontract, or Contractor’s payment or partial payment of any sums to Principal under the Subcontract, or any other forbearance on the part of either the Contractor or the Principal to the other, shall not in any way release the Surety, its administrators, successors or assigns, from their obligations or liability hereunder. Notice to the Surety of any such alteration, extension, forbearance or payment to Principal is hereby expressly waived by the Surety.

The Surety further agrees that in the event of a breach of the Subcontract on the part of the Principal (as determined in the sole discretion of the Contractor), the Surety will, within seven (7) days after written notice of any such breach of the Subcontract mailed to the Surety by the Contractor, commence to timely and fully complete the Subcontract according to all the terms and

conditions of the Subcontract for the Subcontract amount, and in accordance with the Subcontract schedule and time for completion. If at the option of the Contractor, the Contractor elects to itself complete the Subcontract, employing such subcontractors and laborers, and furnishing such materials as the Contractor may in its sole discretion consider necessary for the completion of the Principal's obligations under the Subcontract, the Surety will upon presentation of bills by the Contractor, immediately pay the same without contest, waiving all defenses which the Surety may have as Surety or which the Principal may have under the Subcontract.

IN TESTIMONY WHEREOF the parties hereto have subscribed their names in

\_\_\_\_\_ County, \_\_\_\_\_ State, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

[SUBCONTRACTOR]

Attest: \_\_\_\_\_  
Witness

\_\_\_\_\_(Seal)  
Principal

[SURETY]

Attest: \_\_\_\_\_  
Witness

\_\_\_\_\_(Seal)  
Surety

GRADING CRITERIA FOR EVALUATION OF PROPOSALS

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

Proposal Package \_\_\_\_\_

1. Proposal Price – 15 points  
Score: \_\_\_\_\_
2. Reputation of the Proposer and of the Proposer’s goods and or services – 10 points  
Score: \_\_\_\_\_
3. Ability to provide specified products – 5 points  
Score: \_\_\_\_\_
4. The ability to comply with the insurance and bonding requirements – 15 points  
Score: \_\_\_\_\_
5. Past relationship with the District – 7 points  
Score: \_\_\_\_\_
6. Past relationship with the Construction Manager – 8 points  
Score: \_\_\_\_\_
7. Current work load and available manpower – 10 points  
Score: \_\_\_\_\_
8. Current financial status and past credit history with vendors - 10 points  
Score: \_\_\_\_\_
9. Previous experience with similar size and scope projects - 15 points  
Score: \_\_\_\_\_
10. Safety program and safety record - 5 points  
Score: \_\_\_\_\_

**Total Score** \_\_\_\_\_ **Ranking** \_\_\_\_\_