



Agenda of Special Meeting

The Board of Trustees McAllen Independent School District

VISION	The McAllen Independent School District is a multicultural community in which students are enthusiastically and actively engaged in the learning process. Students demonstrate academic excellence in a safe, nurturing and challenging environment enhanced by technology and the contributions of the total community.
MISSION	The mission of the McAllen Independent School District is to educate all students to become lifelong learners and productive citizens in a global society through a program of educational excellence utilizing technology and actively involving parents and the community.
GOALS	<ol style="list-style-type: none">1. Student Achievement/Student Focus2. People Development3. Facility Priorities4. Financial Priorities
STRATEGIES	<ol style="list-style-type: none">1. Branding2. Attract/Retain High Quality Staff3. Engaging Learning Environment4. Rigorous/World Class Standards to Customize for Every Learner5. Partnerships with Business/Civic/Education/Organizations6. Future Ready Students7. Financial Priorities

A Special Meeting of the Board of Trustees of the McAllen Independent School District will be held Tuesday, November 1, 2022, beginning at 12:00 PM Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501.

Items listed on this agenda may be taken in an order other than as shown on this agenda. Unless removed from the consent agenda, items identified within the consent agenda will be acted on at one time.

At this meeting there may be discussion and action by the Board on the item(s) and subject(s) listed as follows:

1. **CALL MEETING TO ORDER**
 2. **DISCUSSION AND POSSIBLE ACTION ON CONTRACT NO. 2023-116 - Noble Texas Builders, LLC for the University of Texas Rio Grande Valley (UTRGV)/ McAllen Independent School District (MISD) Collegiate Academy** **3**
Item Submitted: Alejandra Gonzalez, Assistant Superintendent District Operations
Presenter: Dr. J. A. Gonzalez, Superintendent
 3. **ADJOURNMENT**
-

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

Pursuant to Texas Government Code 551.127, a member or employee of a governmental body is authorized to participate remotely in a meeting of the governmental body through a videoconference call, as long as a quorum of the governmental body is physically present at the location of the Board Meeting. Any video conference conducted pursuant to this section will comply with the technical requirements of this section.

Pursuant to Texas Government Code 551.129, the Board of Trustees may use a telephone conference call, video conference call, or communications over the internet to conduct a public consultation with its attorney in an open meeting of the governmental body, or, a private consultation with its attorney in closed meeting of the governmental body.

The notice for this meeting was posted in compliance with the Texas Open Meeting Act on October 28, 2022 at 3:00 P.M.

Natalia Goza

on behalf of the Board of Trustees

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: November 1, 2022

SUBMITTED BY: 

SUPERVISOR: 
Alejandra Gonzalez (Oct 28, 2022 07:57 CDT)

Approved for presentation to the Board of Education:



3 Superintendent of Schools

 **AIA[®] Document A141[™] – 2014****Standard Form of Agreement Between Owner and Design-Builder**

AGREEMENT made as of the 2nd day of November in the year 2022

BETWEEN the Owner:

(Name, legal status, address and other information)

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 N. 23rd Street
McAllen, Texas 78501
Phone:956-618-6000

and the Design-Builder:

(Name, legal status, address and other information)

Noble Texas Builders, LLC, a Limited Liability Company of the State of Texas
108 S. Main Street
La Feria, Texas 78559
Phone:956-277-0708
E-mail:juan.delgado@nobletx.com

for the following Project:

(Name, location and detailed description)

2023-116 Noble Texas Builders, LLC through 2023-1023 Request for Qualifications (RFQ) / Request for Proposals (RFP) Design-Build Firms for University of Texas Rio Grande Valley (UTRGV) / McAllen Independent School District (MISD) Collegiate Academy.

The Owner and Design-Builder agree as follows.

NOTE: Any reference hereinafter this one, to an AIA[™] Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson, P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

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- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
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- 8 TIME
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- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT

(Paragraph deleted)

PREVAILING WAGE SCHEDULE

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

The new University of Texas Rio Grande Valley/ McAllen Independent School District Collegiate Academy will offer high school students a direct path to a bachelor's degree. The Collegiate Academy is conceived to be a two story educational facility of approximately 65,000 square feet.

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§ 1.1.2 The Owner's design requirements for the Project and related documentation:
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Design to facilitate an educational facility to accommodate high school and college curriculum.

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Two story educational facility comprising approximately 65,000 square feet

- Maintain interior layout and floorplan as presented in Board Meeting Presentation on 10/12/22.
- Exterior façade modifications to the existing Collegiate Academy design to meet McAllen ISD finishes..

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

N/A

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

N/A

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Approximately Twenty Million and No/100 Dollars (\$20,000,000.00)

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

November 18, 2022

.2 Submission of Design-Builder Proposal:

TBD

.3 Phased completion dates:

TBD

.4 Substantial Completion date:

July 19, 2024

.5 Other milestone dates:

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

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

.1 Architect

x

.2 Consultants

x

.3 Contractors

x

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

N/A

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

Dr. J.A. Gonzalez, Superintendent of Schools
McAllen Independent School District
2000 N. 23rd Street
McAllen, Texas 78501
Phone:956-618-6000

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

TBD

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

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(List discipline, scope of work, and, if known, identify by name and address.)

TBD

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Juan Delgado, Vice President
Noble Texas Builders, LLC
108 S. Main Street
La Feria, Texas 78559
Phone:956-277-0708
E-mail:juan.delgado@nobletx.com

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: (Specify)

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"), as amended by the Owner; addenda issued prior to execution of the Agreement; the Design-Builder's proposal and written modifications to the proposal accepted by the Owner, if any, and other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. The Contract Documents executed or identified herein shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers. In the absence of individual signatures by Owner and Design-Builder, the Contract Documents identified in the signed contract prevail.

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

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§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the Board of Trustees of the McAllen Independent School District and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work. When the plural "Contract Times" is used, it means milestones designated in the Progress Schedule.

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined. A Calendar Day is a day of twenty-four (24) hours measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven (11) hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Schematic Design Level Documents: \$146,850
Design Development Level Documents: \$195,800
Construction Documents Level Documents: \$391,600
Bidding/GMP Documents: \$48,950
Contract Administration Services to be executed in Design Build Amendment, Exhibit A for a total amount of \$195,800.00

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

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

N/A

Individual or Position	Rate
------------------------	------

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows: [Review for each Project.]

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of zero percent (0 %) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty-one (31) days after the invoice date shall bear interest

(Paragraphs deleted)

in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of four (4) years following the date of substantial completion of the Project..

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

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§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder hereby covenants and agrees that it will provide a Contractor qualified engage in construction and authorized by the comptroller to do business in Texas. The Design-Builder's Contractor shall perform the Work in a good and workmanlike manner and in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner. Unless otherwise provided in the Design-Build Documents, Design-Builder shall provide and pay for the design, labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work Services. The intent of the Design-Build Documents is to include all items necessary for the proper execution and completion of the Work Services including, without limitation, all items and services that are consistent with, contemplated by, or reasonably inferable from the Design-Build Documents, whether or not such items and services are specifically mentioned therein. The Design-Build Documents are complementary, and what is required by one shall be binding as if required by all.

The Design-Builder further covenants and agrees that it shall provide the services of an architect or engineer (as appropriate to the Project) licensed to practice in their respective profession by the State of Texas (the "Design Professional"). The Design-Builder will require by contract that the Design-Professional(s) perform their services with the professional skill and care ordinarily provided by competent architects or engineers (as appropriate) practicing under the same or similar circumstances and professional license. By its execution of this Contract, the Design-Builder certifies that each Design Professional that is a member of the Design-Build Team was selected based upon demonstrated competence and qualifications in the manner provided by Texas Government Code, Section 2254.004. Design-Builder. The Design-Builder's design services shall include normal structural, mechanical, electrical and civil engineering services. Design-Builder shall be responsible for compliance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code Chapter 1001.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any of its Contractors, Consultants, or Design Professionals shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder or any of its Contractors, Consultants, or Design Professionals believe that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. If the Design-Builder (any of its Contractors, Consultants construct or its Design Professional or Consultants design) Work when Design-Builder (including any of its Contractors, Consultants, or Design Professionals), know or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Failure of the Design-Builder and/or its Design Professional to notify the Owner in such circumstances shall result in the Design-Builder being responsible to the Owner for costs and damages resulting from a violation of the applicable law statute, ordinance, building code, rule or regulation. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Design Professional, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner, as requested by the Owner or its Independent Design Professional to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Design Professional and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder, however, such interest shall not preclude the Design-Builder's Design Professional and the Design-Builder's other Consultants from performing within their respective standards of care, as required by law.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner and Owner's Independent Design Professional, showing estimated percentages of completion and other information identified below with each Payment Application:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, as soon as practicable after execution of this Agreement, shall prepare and submit for the Owner's information an initial schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

Not later than ten (10) days following the completion of the 100% Construction Documents by its Design Professional, the Design Builder shall submit a more detailed precedence - style critical path method ("CPM") format satisfactory to the Owner that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and resubmitted for acceptance.

The construction schedule shall not exceed time limits set forth in the Design-Build Documents. This construction schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9. Submission of any construction schedule under this Contract constitutes a representation by the Design-Builder that: (1) the schedule represents the sequence in which the Design-Builder

intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed work; (3) that to the best of its knowledge and belief the Design-Builder is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Design-Builder intends to complete the remaining work in the sequence and time indicated.

- .1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Design-Builder and Owner. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Design-Builder to project cash flow for the Project.
- .2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.
- .3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .4 If any updated schedule exceeds the time limits set forth in the Design-Build Documents for completion of the Work, the Design-Builder shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Design-Builder's planned course of action for completing the Work within the time limits set forth in the Design-Build Documents. If the Design-Builder asserts that the failure of the Owner to provide information to the Design-Builder is the reason for anticipated delay in completion, the Design-Builder shall also specify what information is required from the Owner.
- .5 Neither the Owner or the Design-Builder shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Design-Builder agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.1.10 Certifications.

§ 3.1.10.1 The Design-Builder shall obtain from the Design Professional, Consultants, and Contractors, and furnish to the Owner and Owner's Independent Design Professional, certifications with respect to the documents and services provided by the Design Builder's Design Professional, Consultants, and Contractors (a) that based upon the Design-Professional's observations, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Design Professional, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.10.2 Upon completion of the Project, as a condition precedent to Final Payment, Design-Builder's Contractor shall certify that the Project has been constructed in general conformance with the Design Professional's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Design-Build Documents. Design-Builder's Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code § 61.1036.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner's Independent Design Professional has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents and its Design Professionals, shall not be relieved of their legal standard of care in its review of the Submittals. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals. The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ 3.1.12 Warranty.

§ 3.1.12.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract and Design-Build Documents will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. The Design-Builder further warrants that its 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 Design-Build 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 Design-Builder's Professional.

Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, 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 portion of the Project. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding anything in the Design-Build Documents to the contrary, Owner and Design-Builder expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work within the Project, and each such individual warranty shall run from the applicable Work's Final Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular Work.) Design-Builder's express warranty is 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 Design-Builder's Architect on the manufacturer's or supplier's approved forms for delivery to the Owner and Owner's Independent Design Professional. 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.

§ 3.1.12.2 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 the Owner's Independent Design Professional, the Design-Builder shall promptly remedy defects as covered by Design-Builder's warranty. If Design-Builder 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 Design-Builder's receipt of the written notice, then the Owner may take measures to correct the Work and Design-Builder 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.

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

§ 3.1.12.4 Neither the final payment nor any provision in the Design-Build Documents shall constitute an acceptance of Work not done in accordance with the Design-Build Documents or relieve the Design-Builder or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. The Design-Builder guarantees that the Work will conform to the Design-Build Documents.

§ 3.1.12.5 The building(s) constructed, if any, shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Design-Builder's control. The Design-Builder, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and do any work necessary to make the building(s) watertight. The Design-Builder also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the building(s) to original condition.

§ 3.1.12.6 Manufacturers' Warranties. At Final Acceptance of the Work or interim completion of a particular phase of the Work, Design-Builder shall furnish the Owner two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Owner. These Manufacturers' Warranties are in addition to and not in lieu of Design-Builder's warranty set forth in Sections 3.1.12 and 11.2.2, and the Owner is entitled to look to Design-Builder for remedy in all cases where Design-Builder's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Owner shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and Design-Builder shall cause six (6) copies of an acknowledged set to be made and furnished to the Owner. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Owner than those terms that are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Owner, or be in a freely assignable form and be assigned to the Owner without limitations.

3.5.7 Design-Builder 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 warranty under Section 3.1.12 herein on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and its Independent Design Professional. Prior to termination of the warranty period under Section 3.1.12 herein, Design-Builder shall accompany Owner and its Independent Design Professional on re-inspection of each Work in the Project and Design-Builder shall be responsible for correcting any warranty items which are observed or reported during the warranty period under Section 3.1.12 herein. Design-Builder shall prosecute such warranty work under Section 3.1.12 herein without

interruption until accepted by Owner and its Independent Design Professional, even though such work shall extend beyond the warranty period under Section 3.1.12 herein. If Design-Builder fails to provide the schedules to Owner and its Independent Design Professional, Design-Builder's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device, which is the subject of patent rights or copyrights, held by others.

§ 3.1.13.2 Infringement Indemnity The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, the Owner's Trustees, and its separate contractors and consultants harmless from loss on account thereof suits or claims for infringement of copyrights and patent rights, 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 Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder knew or reasonably should have known that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent and fails to promptly furnish such information to the Owner, the Design-Builder shall be responsible for such loss. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 General Indemnification

§ 3.1.14.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, INCLUDING THE OWNER'S TRUSTEES, OWNER'S INDEPENDENT DESIGN PROFESSIONALS, OWNER'S AGENTS AND EMPLOYEES ("INDEMNIFIED PARTIES"), 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), INCLUDING THE LOSS OF USE RESULTING THEREFROM CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE DESIGN-BUILDER, ANY OF ITS DESIGN PROFESSIONALS, A CONSULTANT, A CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED OR CONTROLLED 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 THE OWNER OR INDEMNIFIED PARTIES, WHERE THAT NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE. IN SUCH EVENT, WHERE THE NEGLIGENCE OF OWNER OR ANY OF THE INDEMNIFIED PARTIES IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE, THE DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND OTHER INDEMNIFIED PARTIES, AND THE DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH THE OWNER, THE INDEMNIFIED PARTIES, AND THE DESIGN-BUILDER ARE ALL PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, its Design Professionals,, any of its Consultants, its Contractor, or anyone directly or indirectly employed by them, under insurance policies, workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 DESIGN-BUILDER SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S TRUSTEES, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS, OR THE EMPLOYEES OR AGENTS OF ANY OF THEM, FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO DESIGN-BUILDERS' OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER'S TRUSTEES, OWNER'S INDEPENDENT DESIGN PROFESSIONALS, OWNER'S AGENTS AND EMPLOYEES ("INDEMNIFIED PARTIES"). THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO DESIGN-BUILDER'S OBLIGATIONS UNDER SECTION 3.1.14 IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH DESIGN-BUILDER AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN

AGREEMENT BY DESIGN-BUILDER TO INDEMNIFY AND PROTECT OWNER AND THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF THE INDEMNIFIED PARTIES DEFINED HEREIN, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR OTHER INDEMNIFIED PARTIES IS A CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND OTHER INDEMNIFIED PARTIES, AND THE DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH THE OWNER, THE INDEMNIFIED PARTIES, AND THE DESIGN-BUILDER ARE ALL PARTIES.

§ 3.1.14.4 The Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, Owner's Trustees, Owner's Independent Design Professional, Owner's consultants, or the employees or agents of any of them, pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Design-Builder is to comply with said statutes in performance of the Work by Design-Builder and that the obligations the Owner, Owner's Trustees, Owner's Independent Design Professional, Owner's consultants, or the employees or agents of any of them under said statutes, are secondary to that of the Design-Builder.

§ 3.1.14.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 3.1.14, 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.

§ 3.1.14.6 The provisions of Article 3.1.14 in its entirety shall survive the completion, termination or expiration of this contract.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

§ 3.1.17 Representations And Warranties

§ 3.1.17.1 The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Design-Build 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 Design-Build Documents;

- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- .4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- .5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Design-Build Documents.

§ 3.1.18 Business Standards

§ 3.1.18.1 Design-Builder, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Design-Builder shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Design-Builder’s employees and agents in their relations with Owner’s employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner’s Criteria unless the Owner and Design-Builder execute a Modification. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Owner, or the work installed by other contractors, is not guaranteed by the Owner. The Design-Builder shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Design-Builder’s failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Design-Builder without any additional cost to the Owner.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner’s Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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.

§ 4.2 Evaluation of the Owner’s Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner’s Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner’s Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder’s recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder’s evaluation of the Owner’s Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, using area, volume, or similar conceptual estimating techniques and, if necessary, recommendations to adjust the Owner’s Criteria to conform to the Owner’s budget;
- .3 a preliminary schedule, which shall include proposed design milestones [for 60% and 90% design]; dates for receiving additional information from, or for work to be completed by, the Owner; recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for

- phased construction, if any; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- 4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner based upon the mutually agreed-upon program, schedule, and budget and any information agreed upon from the Section 4.2 report. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials and establish, in general, their quality levels.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of Construction Documents. . The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3.3 Construction Documents § 4.3.3.1 Based on the Owner's approval of the Preliminary Design, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Preliminary Design and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. Following review and approval of Shop Drawings and Product Data by its Design Professional, the Design-Builder will provide Shop Drawings, Product Data, Samples and other similar submittals to the Owner's Independent Design Professional. Design requirements of governmental authorities having jurisdiction over the Projects will be incorporated into the Construction Documents.

Construction Documents will be submitted to the Owner at 50% and 100% completion along with an updated estimate of the Cost of the Work prepared in accordance with Section 6.3, for review and approval. The Design-Builder shall inform the Owner in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations to reduce cost to maintain the budget, including but not limited substitution of materials or revision or alterations in the design, to bring the Project within the Owner's current identified budget, but shall not delete necessary components of the Project without the approval of the Owner's Board of Trustees.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Following completion of and Owner's approval of the 100% complete Construction Documents, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner and the Owner's Independent Design Professional for review and Owner's acceptance. The Design-Builder's Proposal shall include the following:

- .1 A list of the Construction Design documents and other information;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any assumptions, qualifications and exclusions, if applicable (To the extent provisions included in the assumptions, qualifications and exclusions attempt to change any term or condition included in this Agreement, and such provisions conflict with the terms stated in this document, such provision will be deemed to have no effect and will be void *ab initio*);
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

After Owner's approval of the Design-Builder's Proposal, the Design-Builder shall not make or approve any change in the Work, except for minor changes in the Work not involving an adjustment in the Contract Sum or Guaranteed Maximum Price, expenditure of contingency funds or an extension of the Contract Time, without the prior written consent of the Owner's representative. The Architect shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the Design-Builder without the Owner's prior written consent.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 [Paragraph Deleted]

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.2.5 The Design-Builder shall be responsible for correcting Work which does not conform to the Design-Build

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§ 5.2.6 Startup/Commissioning. Design-Builder shall conduct a thorough and systematic performance test of each element and total system of the installed equipment in accordance with **Schedule A** and demonstrate that all equipment complies with the requirements of the Design-Build Documents. Design-Builder shall provide advance written notice of at least ten (10) business days to the Owner of the scheduled test(s). The Owner shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the equipment. Design-Builder, or its Subcontractor(s), shall correct or adjust all deficiencies in operation of the equipment identified during the course of the tests described in this Section. Design-Builder shall provide to the Owner a description of the ongoing training requirements for the site's operations and maintenance personnel necessary to maintain proper equipment performance after Final Acceptance.]

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.3.4 Prevailing Wages. Attention is called to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Design-Builder and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 5.3.4.1 In accordance therewith, the Owner has established a scale of prevailing wages which is attached as Exhibit C, and not less than this established scale must be paid on the project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction.

§ 5.3.4.2 If the Design-Builder or any of its Contractors or Subcontractors violates the provisions of Sections 3.4.4 or 3.4.5 above, Design-Builder shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 5.3.5 The Design-Builder shall be responsible for the actions of Design-Builder's forces and all tiers of Subcontractor's forces. The Design-Builder recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Design-Builder's forces consistent with the nature of the work being performed, including wearing shirts at all times. Sexual harassment of employees of the Design-Builder or employees or students of the Owner by employees of the Design-Builder is strictly forbidden. Any employee of the Design-Builder who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Design-Builder, including removal from the job site.

§ 5.3.6 The Design-Builder shall furnish a list to the Owner of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction.

§ 5.3.7 At all times during the progress of the Work Design-Builder shall assign a competent resident superintendent and any necessary assistants, all satisfactory to the Owner. Any Superintendent designee shall be identified in writing to the Owner promptly after Owner issues written Notice to Proceed with Construction. The Superintendent shall represent the Design-Builder and all directions given to him shall be binding on the Design-Builder. The designated Superintendent shall not be replaced without written notice to the Owner, except under extraordinary circumstances.

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The Superintendent may not be employed on any other project prior to final completion of the Work.

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

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

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder 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 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may

direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder 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 Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying 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 Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and 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, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written 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 deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, 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 Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be

conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, 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; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each

Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 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 Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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 Design-Builder 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 Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder 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 Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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 Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If

such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of 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 Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder 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 Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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 Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable,

and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written 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 Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 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.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of

this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3** Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4** The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

§ 14.1.6.2 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 abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

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

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build 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.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder 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 in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract 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.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

- .6 Other:

Schedule 1 to A141-2017 Noble Texas Builder LLC's response to RFQ

Init.

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

OWNER *(Signature)*

Tony Forina President Board of Trustees
(Printed name and title)

P Blake Henshaw

Approved as to Form: Blake Henshaw
Attorney: Walsh, Gallegos, Trevino, Kyle & Robinson P.C.

DESIGN-BUILDER *(Signature)*

Juan Delgado, Vice President
(Printed name and title)



Init.

User Notes:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Blake Henshaw, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:34:48 ET on 10/26/2022 under Order No. 3104236826 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

P Blake Henshaw

(Signed)

Attorney: Walsh, Gallegos, Trevino, Kyle & Robinson, P.C.

(Title)

October 26, 2022

(Dated)



**2023-1023 Addendum 5
Noble Texas Builders LLC
Supplier Response**

Event Information

Number: 2023-1023 Addendum 5
Title: Request for Qualifications (RFQ) / Request for Proposals (RFP) Design-Build Firms for University of Texas Rio Grande Valley (UTRGV) / McAllen Independent School District (MISD) Collegiate Academy
Type: Request for Qualifications
Issue Date: 9/9/2022
Deadline: 9/22/2022 11:00 AM (CT)
Notes: Request for Qualifications (RFQ) / Request for Proposals (RFP) Design-Build Firms for University of Texas Rio Grande Valley (UTRGV) / McAllen Independent School District (MISD) Collegiate Academy

McAllen Independent School District (the "District") invites your proposal on the referenced project.

Interested respondents may obtain specifications through Ionwave. The District prefers and encourages contractors to submit their proposals electronically through IonWave.

Any questions regarding this solicitation must be submitted through the "Questions" option located on the Ionwave website, no later than the date and time specified on the solicitation. Questions/clarifications regarding this solicitation will not be answered by phone nor email.

*Do not contact the Architect/Engineer or Project Manager.

Contact Information

Contact: Graciela Garza Senior Buyer

Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126

Phone: (956) 6574487

Fax: (956) 6574481

Email: ggarza@mcallenisd.net

Noble Texas Builders LLC Information

Contact: Jose Castro
Address: 108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: jose.castro@nobletx.net

By submitting your response, you certify that you are authorized to represent and bind your company.

Juan Gerardo Delgado

Signature

Submitted at 9/22/2022 09:16:34 AM (CT)

juan.delgado@nobletx.com

Email

Requested Attachments

1295 Certificate

MISD - 1295.pdf

Upload completed Form 1295. Form must be completed online:
http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

If not applicable to your company, please attach a statement indicating the reason. (refer to attribute # 3)

W9 Form

NTB_W-9_2022.pdf

Please upload your completed W9 form. (refer to attribute # 5)

Assumed Name Certificate/ Fictitious Name Documentation/Disregarded Entity Documentation

No response

Upload your Assumed Name Certificate/ Fictitious Name Documentation/Disregarded Entity Documentation (refer to attribute # 6)

HUB Certificate

NOBLE_HUB_2024.06.29.pdf

Upload your HUB Certificate, if applicable (refer to attribute # 32).

Financial Statement

FS July 2022 - confidential.pdf

Upload your CURRENT financial statement (refer to line item # 20).

Insurance Certificate (Acord Form)

MISD Design Build Bid_COI.pdf

Upload your Certificate of Insurance in Acord form. (refer to section 8 of Terms and Conditions)

Conflict of Interest Questionnaire (CIQ) Form

MISD - CIQ.pdf

Upload your completed Conflict of Interest Questionnaire. If no conflict, indicate "N/A" (not applicable) on the form.

Attach Resume for each Key Personnel

MISD-ATTACHMENTS(9-22-22).pdf

Attach Resumes

Bid Attributes

1	PLANS/DRAWINGS, TECHNICAL SPECIFICATIONS, AND TERMS AND CONDITIONS Review the documents in the "Attachments" tab. Acknowledge you have read, understood, and certify. **This is your electronic signature. <input checked="" type="checkbox"/> I have read, understood, and certify. (I have read, understood, and certify.)
2	Deviations and Exceptions If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, enter N/A (Not Applicable). <input type="text" value="N/A"/>
3	Form 1295 - Certificate of Interested Parties The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online. Access form at: <ul style="list-style-type: none">• http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm• Complete the form• Enter solicitation number and name• Print and sign form• Attach form on "Response Attachments" tab If exempt, attach documentation. <input checked="" type="checkbox"/> I have read and understand. (I have read and understand.)
4	Delinquent Taxpayers In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with any proposer indebted to the District. **This is your electronic signature. <input type="text" value="I am NOT a delinquent taxpayer to McAllen ISD"/>
5	Provide the business name as it is registered with the Texas Comptroller, or similar. *Note: the name must match IRS registration and W-9 form. Attach Completed W9 under response attachments <input type="text" value="Noble Texas Builders, LLC"/>

6 Does your company have a business name on Line 2 of the W-9? If yes, attach an Assumed Name Certificate/Fictitious Name issued by the State/County (on the "Response Attachments" tab).

- Yes (upload Assumed Name Certificate) (Yes (upload Assumed Name Certificate))
- No (No)

7 Felony Conviction Notification

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." This notice is not required of a publicly held corporation.

Select where applicable:

- A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.
- B. My company is not owned nor operated by anyone who has been convicted of a felony.
- C. My company is owned and operated by an individual who has/have been convicted of a felony.

**This is your electronic signature.

B. My company is not owned nor operated by a felon

8 Felony Conviction Details

If your firm is owned or operated by anyone who has been convicted of a felony, please list their names and the details of the conviction(s). If not applicable, please enter N/A (not applicable).

N/A

9 Criminal History Record Information Review of Certain Contract Employees

Bidder agrees to comply with Section 22.0834. Criminal History Record Information Review of Certain Contract Employees, Texas Education Code if awarded a contract through this solicitation. The undersigned Bidder, if awarded a contract, shall obtain criminal history record information through the criminal history clearinghouse as provided by Section 411.0845, Government Code relating to an employee or applicant who has or will have continuing duties related to the contracted services; and the employee or applicant has or will have direct contact with students. The Bidder agrees to certify of the receipt of criminal history record information before or immediately after employing or securing the services of the employee or applicant that has or will have continuing duties related to the contracted services if the employee or applicant has or will have direct contact with students. The Bidder further agrees that if awarded a contract, shall assume all expenses associated with the criminal background check and shall immediately remove any employee or agent who was convicted of a felony or misdemeanor involving moral turpitude, as defined by Texas law, from District property or the location where students are present.

A. None of my employees and any of my subcontractors has or will have continuing duties related to the contracted services; and has or will have direct contact with students. I further certify that my company has taken precautions or imposed conditions to ensure that my employees and any subcontractor will not have continuing duties related to the contracted services; and will not have direct contact with students throughout the term of the Contract.

OR

B. Some or all of my employees and/or my subcontractors will have continuing duties related to the contracted services; and will have direct contact with students. I further certify that:

1. I have obtained all required criminal history record information regarding all of my employees and/or my subcontractors. None of my employees and/or my subcontractors has any conviction or other criminal history information if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state. **If available, attach a copy of your FAST Pass Receipt.**
2. If I receive information that any of my employees and/or subcontractors subsequently has a reported criminal history, I will immediately remove the covered employee from contract duties and notify the District in writing immediately.
3. I will provide the District with the names and any other requested information regarding any of my employees and/or subcontractors so the District may obtain criminal history record information if awarded a contract.
4. If the District objects to the assignment of any of my employees and/or subcontractors, I agree to discontinue using the individual to provide services to the District.

**This is your electronic signature.

A. None - I hereby agree and certify.

1 Confidential/Copyrighted Information

Contractor agrees, if a bid is, or parts of bid is confidential, the Contractor has specified by stamping in bold letters the term "CONFIDENTIAL" on all or the confidential part of the bid. The bid may be considered public information even though all or parts are marked confidential. Furthermore, Contractor agrees a copyrighted bid is unacceptable and will be disqualified as unresponsive.

**This is your electronic signature.

I have read and agree. (I have read and agree.)

1 1	Declaration of Business Location - Texas Education Code 44.031(b)(8) Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner: A. Has its principal place of business in the State of Texas; OR B. Employs at least 500 persons in the State of Texas C. Principal place of business is not in the State of Texas. **This is your electronic signature. <input type="text" value="A. Principal place of business is in TX"/>
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1 2	Declaration of Business Location - Texas Education Code 44.031(b)(8) Specify principal place of business (City/State). If not applicable, please enter N/A (not applicable). ***This is your electronic signature. <input type="text" value="La Feria, Texas"/>
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1 3	Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13) If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. **This is your electronic signature. <input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)
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1 4	Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19) If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, 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. **This is your electronic signature. <input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)
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1
5 **Entities That Boycott Israel**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**This is your electronic signature.

I agree and hereby certify. (I agree and hereby certify.)

1
6 **TEXAS GOVERNMENT CODE Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.**

A governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

1
7 **TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES**

Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter. SECTION 2. Subchapter F, Chapter 2252, Government Code, as added by this Act, applies only to a contract or purchase for which a governmental entity first advertises or otherwise solicits bids, proposals, offers, or qualifications on or after the effective date of this Act. SECTION 3 This Act takes effect September 1, 2017.

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

1
8 **Non-Collusion Statement**

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

1
9 **Contracts in Excess of \$250,000**
Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**This is your electronic signature.
 I have read and hereby certify. (I have read and hereby certify.)

2
0 **Contracts in Excess of \$10,000**
All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

**This is your electronic signature.
 I have read and hereby certify. (I have read and hereby certify.)

2
1 **Equal Employment Opportunity**
Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”(30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**This is your electronic signature.
 I have read and hereby certify. (I have read and hereby certify.)

2
2 **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**
When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**This is you electronic signature.
 I have read and hereby certify. (I have read and hereby certify.)

23 Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

24 Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

25 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

26 (H) Debarment and Suspension (Executive Orders 12549 and 12689)

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

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

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

27 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or submit an offer for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

28 2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS

An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

29 2 C.F.R. § 200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

The District, as a non-federal entity, is prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and physical security surveillance of critical infrastructure and other national security purposes, and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216. The vendor shall certify that they will not purchase equipment, services, or systems that use covered telecommunications, as defined herein, as a substantial or essential component of any system, or as critical technology as part of any system.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

3 0 2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS

As appropriate and to the extent consistent with law, the District should, to the greatest extent practicable under a Federal award, provide has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

3 1 2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

CFR 200.321 requires that (a) non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. (b) Affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

**This is your electronic signature.

I have read and hereby certify. (I have read and hereby certify.)

3 2 Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms

Contractor certifies the Bidder's company is HUB certified with the State of Texas.

- I am an Active certified HUB vendor (attach HUB certificate):
- Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms
- I am neither.

**This is your electronic signature.

3 3	<p>2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS</p> <p>Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.334.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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3 4	<p>Buy American Provision</p> <p>Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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3 5	<p>Federally Funded Purchases</p> <p>Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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3 6	<p>Addendum</p> <p>Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby acknowledge. (I have read and hereby acknowledge.)</p>
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3 7	<p>Has your organization operated under any former names?</p> <p><input type="checkbox"/> Yes (Yes)</p> <p><input checked="" type="checkbox"/> No (No)</p>
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3 8	<p>If you company has operated with former names. Please list names.</p> <p><input type="text" value="N/A"/></p>
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3 9	<p>Name of company</p> <p><input type="text" value="N/A"/></p>
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4 0	<p>Address of Principal Office</p> <p><input type="text" value="108 S Main St. La Feria, TX 78559"/></p>
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4 1	<p>Phone</p> <p><input type="text" value="(956) 277-0708"/></p>
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4 2	<p>Form of business organization: (Corporation, Partnership, Individual, joint Venture, etc.)</p> <p><input type="text" value="Corporation"/></p>
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4 3	Year Founded	2015
4 4	Primarily individual to contact	Juan Delgado
4 5	Email	juan.delgado@nobletx.com
4 6	How many years has your organization been in business in its current capacity?	7 years and 7 months
4 7	How many years has your organization been in business under its present name? Under what other or former names has your organization operated?	7 years and 7 months
4 8	If your organization is a corporation, please provide Date of incorporation, state of incorporation and list all officers of the corporation.	01/01/2016 State of Texas Patrick Williams, Rene Capistran, Alfredo Garcia, Juan Delgado, and Eric Delgado
4 9	If your organization is a partnership, answer the following: Date of organization, type of partnership: (if applicable); Names of general partners.	N/A
5 0	If your organization is individually owned answer the following: Date of organization, name of owner.	N/A
5 1	If the form of your organization is other than those listed above, describe it and name the principals.	N/A
5 2	Has any owner or manager of your organization been convicted of a felony? If so, please describe. (Publicly held corporations need not answer this question.)	No manager of this organization has been convicted of a felony.
5 3	Is your organization and its principals, in good standing with all state or federal governmental regulatory agencies, including the Internal Revenue Service?	Yes
5 4	How long has your organization operated under its current Tax Identification Number?	7 years and 7 months
5 5	List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable.	General Contracting Licensing N/A

5 6	List jurisdictions in which your organization's partnership or trade name is on file.
	Texas

5 7	List the categories of professional services that your organization normally provides with its own forces.
	General Contracting Self-Perform (Wood blocking, Door and Hardware installation, cleaning during construction, final cleaning, material handling, Accessories installation)

5 8	Identify project of similar size and scope designed and built by your firm.
	<p>UTRGV General Classroom Building</p> <p>New 120,000sf Design Build Classroom and Computer Center for UTRGV. Building consisted of a new Computer labs, classroom, study rooms. Design started in 1998 and construction was completed in late 1999. Contract Amount = \$13,800,000 Owner representative: Gilbert Gallegos, AIA (512) 297-7299</p> <p>Jubilee Harlingen</p> <p>This is the first of 2 new elementary schools we have designed and built for Jubilee Academies with Performance Charter Schools. Located at 123 S Palm Court, Harlingen, TX., this one-story, 47,077 SF Pre-K through middle school includes classrooms, administration offices, a cafeteria, a multi-purpose gym, a kitchen, and a library. Outside services provided a soccer field and playground, separate visitor and staff parking lots with a bus loading and unloading zone along with complete landscaping.</p> <p>Contract Amount = \$7,489,955 Owner: Jay Lemery, Director of Facility Development, Performance Charters (281) 581-0706</p> <p>Jubilee Brownsville:</p> <p>This is the second new elementary school we have designed and built for Jubilee Academies with Performance Charter Schools. Located on a 14-acre site in Brownsville, this 1-story, 53,971 SF Pre-K through 5th-grade elementary school includes 31 classrooms, administration offices, a cafeteria with an industrial kitchen, a computer lab, a library, and a beautiful multi-use gym. Outside services provided a soccer field and playground, separate visitor and staff parking lots with a bus loading and unloading zone along with complete landscaping.</p> <p>Contract Amount = \$10,370,026 Owner: Jay Lemery, Director of Facility Development, Performance Charters (281) 581-0706</p>

5 9	Has your firm ever failed to complete work or been terminated after a contract was awarded to it?
	No

6 0	Within the last five years, has any officer or principal of your firm ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please give details below)
	No

6
1 Describe your firm's experience, if any, with McAllen Independent School District.

We've had the privilege of working with MISD on the following projects:

- 2022 - MISD Kitchen Renovations, Leonel H. Gonzalez Elementary School, and Andrew Jackson Elementary School \$2,911,973
- 2022 - MISD Kitchen Renovations, Alonso de Leon MS and Dorothy Brown MS \$2,213,891
- 2020 - MISD District Wide Water fountain replacements \$315,920
- 2019 - Memorial HS Cafeteria renovation Phase 1: \$287,561 Phase 2: \$1,169,000
- 2019 - MCHI Gym, Auditorium renovation \$42,544
- 2018 - MISD Lamar Fence project \$11,021
- 2017 - MISD welding shop electrical work \$18,000

6
2 Describe contributions by the firm or firm's personnel to educational programs, publications, and professional organizations related to public education and public works construction projects

Noble is a strong believer in giving back to the communities we live in. Noble has established the Noble Leadership Academy where our team members have the opportunity to expand their knowledge in construction through hands-on training, online classes, and classroom setting courses. Some examples of these trainings are public speaking, safety-related courses, scheduling, constructability, and so forth. These trainings allow our team members to continuously learn and grow professionally to better serve our clients.

Noble Teacher Externship/Student Internship Pilot Program. Teachers and students were selected to participate in our program during the summer. This past summer, Los Fresnos CISD teachers participated in a 3-week summer externship program where they focused on integrating industry strategies to help mitigate gaps between K-12, Higher Ed. and Industry. This initiative provides teachers and students with experiences in business and industry that deliver learning opportunities outside the traditional classroom. Our Initiative partners included: Los Fresnos CISD, Texas Workforce Commission, Cameron County Workforce Solutions, City of Los Fresnos EDC, GMS Architects, and Associated General Contractors of America.

Noble has also teamed up with RGV Lead to mentor and assist teachers in the Rio Grande Valley to better understand our needs in the industry and pass this along to their students.

GMS participates in the Brownsville ISD Architectural Internship Program. Every summer GMS will introduce an aspiring architectural student to a real office environment. They will take part in drafting exercises and tasks on our active projects, and they will also get an opportunity to visit current job sites to attend project meetings and see construction firsthand.

Noble Charities Scholarships- Noble has awarded multiple yearly student scholarships to RGV Students.

Noble Charities has the following active scholarship endowments:

- UTRGV Scholarship Endowment
- STC Scholarship Endowment
- Texas A&M McAllen – Scholarship Endowment
- Our Lady Of The Lake, La Feria – Scholarship Endowment

6
3 List design awards received by the firm. Identify the project, award, awarding entity, and date received

- Association of General Contractors – Rio Grande Valley Chapter Firm of the Year 2011
- Association of General Contractors – Rio Grande Valley Chapter Firm of the Year 2016
- Texas Hill Country The 25 Most Beautiful High Schools in Texas 2016
- Currently submitting UTRGV Harlingen Collegiate High School to American School and University and Learning by Design publications.

**6
4 Provide a brief statement of understanding of the scope of work, key challenges and the respondents vision for delivering a high quality project with the Design Build methodology**

The new 66,500sf UTRGV-MISD College Academy School will be a two-story building that will offer students a direct path to a bachelor's degree. Through this program, students can earn college credits toward their bachelor's degrees. This building will benefit hundreds of Valley high school students by giving them an academic and a financial jump on college. This building has been previously designed, built, and vetted by the University of Texas Board of Regents for Harlingen CISD. Having the building operational by the end of next year requires an aggressive team who can design and build in a short period of time. Having the original team design this building will guarantee the schedule expectations are met and construction will start on time with completion meeting MISD's needs.

Another challenge serving UTRGV-MISD College Academy School will be communication among the members of the project team. The team consists of UTRGV, MISD and our Design/Build team. Noble's plan to manage this communication would include weekly meetings for the team, the use of Project Definition Rating Index (PDRI) and documentation. The meetings keep the communication flowing on a regular basis and quickly develop the relationships needed to make the UTRGV-MISD College Academy School a success. The use of PDRI ensures the understanding of all team members to verify we are all at the same level of information.

We also focus on current market conditions and material escalations. Material cost continue to escalate monthly. Noble has been very successful mitigating material cost escalations by buying-out/procuring the project within 30 days after Notice To Proceed. This will require a team effort to review and approve submittals within days in lieu of weeks. The Noble-GMS, Ethos Engineering and GRA team is currently working on three ongoing project and have been able to successfully meet these expectations.

**6
5 Describe briefly in written and/or graphic form the work process and schedule the firm proposes to realize MISD's scope, budget, schedule and quality objectives.**

The new UTRGV-MISD College Academy School has a very aggressive schedule that requires a team who is familiar with the requirements and demands of this type of building. This building was designed by GMS Architects once for Harlingen CISD. The building design has proven to meet the owner's expectations and needs, therefore having our team (Noble+GMS Architects, ETHOS Engineering, and Green- Rubiano & Associates), will cut the design schedule significantly. To have a facility of this type ready for occupancy by July of 2024, design drawings should be 100% complete by November of 2022 and breaking ground no later than December of this year. With input from MISD end users, the new building design can be ready for construction by the end of this year. Noble has had the privilege of working with MISD and understands their construction standards and needs to be coordinated with the Design team and incorporated into the construction drawings. The budget will be controlled by obtaining up-to-date information from subcontractors and suppliers on material availability and potential cost impact. This information will be coordinated with the Design team and MISD for adherence to the contract documents. Constant communication through Charette meetings with all parties (MISD and Design-Build Team) has proven to be the key to success.

Our construction process methodologies are made up of design phase, bid phase and construction services. In each phase, we implement project controls in the areas of cost control, scheduling, quality assurance/quality control, safety and project reporting.

**6
6 Describe the manner in which the firm will work with MISD to define the program, create the design, and implement the Project. Provide a recent example of a project relevant to the Project, if applicable.**

Defining the program is the key to the success of the project. Everything will stem from the program, so clearly defining the key spaces, the size of each and their adjacencies, will help guide the overall design. The program will not be finalized in one meeting, but rather over the course of several meetings with stakeholders from both UTRGV and McAllen ISD. Understanding the essential purpose of the building and satisfying each groups goals' is what these program meetings seek to accomplish. This process will be ongoing and should be one of the first meetings that are scheduled.

Two examples that are relevant to this Project is the work we provided for UTRGV Harlingen Collegiate High School and UTRGV Edinburg Collegiate High School. UTRGV Harlingen Collegiate has been successfully built and UTRGV Edinburg Collegiate is currently in the bidding process. These two projects went through this programming phase, so we are aware of this important task and the unique partnership between the two entities. On the latest UTRGV Edinburg Collegiate Project we were able to accelerate and streamline this process because of previous lessons learned and understanding many of UTRGV standards that have been part of both projects.

The program will inform the overall design of the building and both UTRGV and McAllen ISD will collaborate on this effort and the Noble+GMS team will be there to guide and facilitate the process in an expeditious manner.

The program for the new UTRGV-MISD College Academy School has already been defined and vetted by the University of Texas Board of Regents. This exact building has already been designed by GMS Architects and built for Harlingen CISD. To expedite the construction and meet the demands of this fast-growing school district, MISD is looking into building an identical building in McAllen. Having the original design team (GMS Architects, ETHOS Engineering, and Green-Rubiano & Associates) on this project will assist in fast-tracking the design of the new building since they had already gone through the UT System program requirements. Noble will also team up with Javier Hinojosa Engineering for this project. Mr. Hinojosa has vast experience with MISD and understands the district's needs and is widely knowledgeable about the existing utility infrastructure of the location where the building will be placed.

**6
7 Describe how the firm documents the design for presentation to the Board and community. Provide a relevant illustrative example.**

Presentations to the Board and Community should be illustrative and visually not technical in nature. It should be presented in a simplified way to communicate the overall concept and end product. We will use colored site plans and floor plans identifying key spaces and building size. We will also include relevant imagery to describe any feature spaces to communicate an overall concept and we will use perspective renderings to capture the overall building design.

Describe the firm's approach to contract documents and how quality and coordination is assured in the field.

Having a good relationship with trade subcontractors and suppliers, allows us to better understand material and equipment availability. With current Supply Chain issues, it is even more important than ever to stay up to date with materials and equipment that could impact the overall cost and schedule of the project. The feedback received is shared with the Design Team and the end user. In collaboration meetings, this information is used to modify the contract documents that reflect materials and equipment of equal or better performance that are available and will not affect the overall performance and schedule of the project.

Noble+GMS takes pride in the quality of our work. During Pre-Construction, we work together with the design team on recommending products and materials that are common in the local construction industry. Doing so ensures that the local workforce is knowledgeable of the materials being installed and avoids the poor installation of materials or equipment they are not familiar with. During Construction, all our superintendents and project managers conduct a pre-installation meeting with each trade independently, where quality expectations are set. During these meetings, subcontractors are made aware of specific notifications they must report to Noble before proceeding further in their installation. Once the superintendent is notified by the subcontractor, he/she performs a specific quality control test to assure the installation performs with the specifications and the manufacturer's recommendations. If the subcontractor fails to notify Noble of required inspections, the subcontractor will be asked to remove their material at their own expense.

Our quality control procedure is an ongoing system that occurs throughout the construction process, not a start/stop activity. At the final inspection, we aim to have zero items on your punch list. Our Quality Control Philosophy centers on our company's core values: Trust, Team & Community. We are committed to building relationships with customers. Our Quality Control / Assurance Program is developed around the principle of Total Quality Management.

**6
9** Please provide examples of work that your firm considers to be exceptional. Also, list the project and contact and telephone number.

Brooks County ISD – STEM and CATE Buildings

STEM Lab is an add on facility to the existing elementary campus. The new building provides new classroom and is equipped with restrooms, cabinets, quartz counter tops, full emergency fire sprinklers and new roof top HVAC system.

CATE Building is new facility on the High School campus including 25 welding stations, each station including its own separate exhaust system. Also included restrooms and full life safety fire system, and Building structure consists of a hybrid pre-engineered metal building and masonry components for extended durability.

Owner Representative: Dr. Maria Casas

Title: Superintendent

Phone: (361) 325-8000

BPUB-Annex Building

This was a ground-up 3-story, hurricane-rated emergency command center designed to withstand hurricane exposure category “C”, risk category 4 winds. The facility controls the electrical and water service grids for the City of Brownsville. It includes a state-of-the-art command room with top-of-the-line IT equipment to allow for the control of all utilities in case of an emergency or catastrophic occurrence.

The existing facility infrastructure lines had to all be tied into the new control center without disrupting any power or water source that would affect the operation of the City of Brownsville. The plant is equipped with a new chill water mechanical system and backup generators to minimize any concern Brownsville PUB might have of possible damage to the highly sophisticated IT equipment or disruption to city utility operations.

Owner Representative: Marie Leal, PE

Title: Director of Special Projects and W/WW Engineering, Planning & Operations, BPUB

Phone:(956)983-6275

Cameron County Isla Blanca Park Improvements

With over one mile of beach shore, the 200+ acre Isla Blanca Park is known as the crown jewel of the County Park System. The complete project was funded by a \$31 million dollar bond and needed an early start to avoid losing funding. The project was divided into 2 phases to expedite construction.

To keep the project within budget, Cameron County brought in its own forces to relocate sand dunes and re-establish vegetation in another area of the beach.

Phase 1 began construction while Phase 2 was undergoing final development of the plans saving time and securing no loss of funds. This phase included the construction of the first outdoor amphitheater in the County, demolition of existing structures, and construction of a new 8,500 SF multi-purpose building, pathways, parking areas, landscaping, and refinishing of the Dolphin Cove Restroom.

Phase 2 involved the demolition of existing structures and the construction of 2 new pavilions connecting the boardwalk, parking, and northeast loop road.

Owner Representative: Danny Villarreal

Title: Construction Manager, Cameron County

Phone: (956) 247-3514

STC RCPSE (Regional Center for Public Safety Excellence)

The new RCPSE was designed in response to the rapidly growing demand for public safety, law enforcement, fire science, and homeland security professionals. The new 19,800sf center has made South Texas College the first US border community college to establish integrative training for local, state, and federal professionals along the US/Mexico border.

The scope of this ground-up educational training facility included a new skills pad, Emergency Vehicular Obstacle Course (EVOC), Cityscape, and a state-of-the-art 19,800sf facility to train future law enforcement personnel.

Owner Representative: Rick de la Garza, AIA

Title: Director of Facilities, Planning & Construction, South Texas College

Phone: (956) 872-3737

We take pride in sharing some of our many exceptional projects/experiences. At Noble, we believe that every project we build symbolizes the culmination of an extraordinary team effort, in which our clients play a significant role. Upon request, we will gladly provide a list of our clients and projects to demonstrate our proven track record.

**7
0** Describe your organization’s concepts for working in a team relationship with an owner during the design and construction of major projects.

Noble+GMS design/build team has a clear understanding of the technical competence and management requirements needed for the UTRGV-MISD College Academy School. The most critical component of a successful design/build project requires teamwork, vision, trust, and constant communication. The Noble+GMS team will work together from the inception through completion of the project to ensure coordination during all design phases and

throughout construction. Our team will focus on good construction practices, hands-on coordination, and continuous communication with all team members.

Our goals are On-time completion of the project, on or below budget, and a high-quality project with minimal punch-list. Our team will verify that the drawings and budget are aligned with the owner's objectives and desires. Accurate drawings at each stage with an understanding of future updates are critical to the validity of the current estimate. To keep up with the design and construction schedule, weekly meetings will be held to review and act on items related to design, schedule, cost, and critical issues to the project. Active involvement in the pre-construction phase of the project will allow Noble to utilize continuous cost.

PRE-CONSTRUCTION PHASE

In the Pre-construction Phase, we establish schedule milestones, that carry over throughout the construction phase. This phase is focused on the following objectives:

- Establishing a preliminary project schedule
- Establish a conceptual budget, monitor, and update through the multiple design phases
- Create a Constructability Review Report Program and continuous update
- Provide material and equipment selection options during the design phase
- Lead team meetings
- Generate BIM Model
- Create Town-Hall meetings for local Subcontractors & Suppliers – very important to encourage and obtain the most local participation to help boost the local economy. These meetings are created to promote the project and educate the local market on upcoming bidding opportunities.
- Pre-qualify subcontractors for proposals
- Construction Planning and Bid Package Strategies
- Assist with ADA Compliant requirement

CONSTRUCTION PHASE

Our approach to the construction phase includes establishing quality standards early and maintaining a Quality Control Program throughout the project. Our Project Manager will be a common denominator throughout the project to ensure the team's goals are implemented.

- Establish and update a numbering & tracking system for all project records.
- Develop lines of communication among team members, subcontractors, and vendors for all aspects of construction.
- Update and refine a complete project construction schedule.
- Create a schedule for all Progress meetings with the Owner
- Identify and track all Owner equipment deliveries and Owner installations.
- Attend all Meeting
- Obtain all required permits for construction
- Coordinate, monitor, and inspect the work by subcontractors to ensure conformance with plans and specifications.
- Assume all responsibilities with means and methods, sequencing of the scope of work, and coordination of all portions of the work.
- Prepare and execute all subcontractor agreements
- Manage and control all change orders, if any
- Conduct weekly meeting
- Manage all project documentation
- Ensure Quality Control
- Project Safety Program
- Assemble, review, and submit all O&M Manuals and other Closeout Documentation
- Complete All Punch List Items
- Obtain a Certificate of Occupancy
- Provide warranty service

**7
1** **How does your firm work with owners to establish a projected construction budget and/or timeline for a project during the design phase?**

Communication will be key during the early phase of the project. A thorough understanding of the end-user's needs, functionality of the project, type of structure, building size and components, will ensure accurate pricing. Once the needs are identified, our estimating team develops estimates based on current market conditions and valuable input from subcontractors. With McAllen ISD and the Design Team, we will analyze the systems and recommend alternative solutions if needed to meet the budget without jeopardizing established functionality or quality.

We will develop an estimate based on historical cost analysis per construction division with input from the subcontractor community to refine the cost. Each estimate phase will be detailed to identify areas that could potentially cause the overall cost to be over budget. We will focus on those areas through design and through subcontractor input. Bringing subcontractor cost input during the design phase enables us to move pricing efficiently from conceptual stages to final GMP packages.

The estimating cost control team will be led by Vice President Juan Delgado and supported by the Director of Estimating Steven Delgado. We also include the Project Executive, Project Manager, and Superintendent in critical roles in the preconstruction phase. Having the project manager and the superintendent involved during preconstruction equips them with a solid understanding of the scope of work, giving them the advantage of efficiently procuring subcontracts and avoiding overlaps or gaps of scope between subcontractors. We also include our subcontractors and their expertise in the early phases of the design and cost estimating process.

**7
2** **Describe your post construction warranty support program and how warranty items will be tracked and resolved.**

Noble takes great pride on every project we work on. Once the project is complete and turned over to the client, we establish a warranty protocol that best works for our client. Warranty procedures are established step by step in the close out documents. Before final completion, Noble team goes through an intense training program for all special systems and equipment of the building. These trainings are documented and recorded for future reference. Since the Client has built a relationship with the Project Manager and the Superintendent, they will be the points of contact during the warranty period. Noble's PM and Superintendent will coordinate with our Services Division, Noble Solutions, which will coordinate the warranty call once the PM or Superintendent record the request. They will follow through our Building Solutions division and communicate the client with the status of the request. If a warranty call affects the functionality of the building, Noble will supply temporary solutions while the permanent one is addressed. Our goal at the end of the day is to provide our clients with a problem free facility which provides the intended needs to the end user. If an issue occurs, Noble will work diligently to provide solutions to minimize any functionality impacts to our clients.

**7
3** **References**

List as references a minimum of three previous clients for whom the firm provided services relevant to those required for the Project. For each, list the reference's name, institution, position (or contact person if reference is an institution), phone/fax number, and list those projects for which the firm provided services to that reference.

MISD reserves the right to contact as references the owners listed in items B.1.5, B.1.6, and E.1.1 herein regarding your firm's services.

Dr. Maria Casas, Brooks County ISD Superintendent, 361-325-8000. (Brooks County ISD CATE and STEM Buildings)

Dr. Gonzalo Salazar, Los Fresnos CISD Superintendent, 956-254-5010. (Los Fresnos Rancho Verde Middle School)

Jay Lemery, Director of Facility Development, Performance Charter School Development, 832-823-8200. (Jubilee Academy Harlingen, Jubilee Academy Brownsville, and The Gathering Place San Antonio)

Ricardo de la Garza, AIA, Director of Facilities, Planning & Construction, 956-872-3737 (STC Regional Center for Public Safety Excellence, Pharr, Tx)

Bid Lines

1 Please describe your firm's work over the last five (5) years(2017-2021): List all projects (particularly Educational Facilities) designed by your firm.

Provide the name, phone, of contact for the owner of each project for reference purposes.

Item Attributes

1. Project # 1 Name

UTRGV Edinburg Collegiate High

2. Project # 1 Nature of Project

The UTRGV Edinburg Collegiate High is a unique partnership between Edinburg Consolidated Independent School District and the University of Texas Rio Grande Valley. GMS collaborated with both entities to program a building that could be utilized during the day as a High School Campus for a (700) student capacity and then transition in the evenings to a college campus

3. Project # 1 Function of the Building

The building has a total of 76,329 sf and includes specialty classrooms for teaching tracts in Engineering, Computer Science, and an Aspiring Teacher Academy. These specialty classrooms are rich in equipment, technology, and A/V infrastructure. The campus also includes a tiered seating large group instruction space that accommodates 175 occupants and a full serving kitchen with a cooler/freezer, dry storage area and a secure designated delivery area at the back of the building. Both the large group instruction and kitchen serving lines open to the 6,000 sf two story volume Commons Area. This space is the hub of the building and will be utilized by students as a collaboration space and dining area. The Commons Area is also anchored by the Information Literacy Center and a set of Learning Stairs. These areas provide unique opportunities for delivering instruction to students and provide flexibility for presentations to small or large groups.

4. Project # 1 size (SF)

76,329 sf

5. Project # 1 Location

Edinburg, Texas

6. Project # 1 Cost

Estimated \$28,500,000

7. Project # 1 Completion Date

Estimated to be complete: January 2024

8. Project # 1 Owner

Edinburg ISD

9. Project # 1 Construction Delivery Method

Competitive Seal Proposal

10. Project # 1 Project Contact Person

Mr. Victor Gonzalez

11. Project # 1 Project Person Phone

(281) 780-2624

68

12. Project # 2 Name

Los Fresnos CISD Rancho Verde Middle School

13. Project # 2 Nature of Project

New 153,914sf Middle School – Consists of five new buildings: Building A – Classrooms, Labs & Administration Offices, Building B – Band Hall, Cafeteria & Kitchen, Building C – Gymnasium, Building D – Athletic Building, Building F – Chiller Plant, Sitework & Utilities.

14. Project # 2 Function of the Building

New Middle School in Los Fresnos. Will serve 800 children in the area.

15. Project # 2 size (SF)

153,914sf

16. Project # 2 Location

Los Fresnos, TX

17. Project # 2 Cost

\$33,546,054

18. Project # 2 Completion Date

Estimated to be completed: June 2023

19. Project # 2 Owner

Los Fresnos CISD

20. Project # 2 Construction Delivery Method

Competitive Sealed Proposal

21. Project # 2 Project Contact Person

Rolando Borrayo, Director of Facilities & Maintenance

22. Project # 2 Project Person Phone #

(956) 832-2085

23. Project # 3 Name

UTRGV Harlingen Collegiate High

24. Project # 3 Nature of Project

The UTRGV Harlingen Collegiate High is a unique partnership between Harlingen Consolidated Independent School District and the University of Texas Rio Grande Valley. GMS collaborated with both entities to program a building that could be utilized during the day as a High School Campus for a (500) student capacity and then transition in the evenings to a college campus.

25. Project # 3 Function of the Building

The building has a total of 66,500 sf and includes specialty classrooms for teaching tracts in Engineering, Computer Science and an Aspiring Teacher Academy. These specialty classrooms are rich in equipment, technology and A/V infrastructure. The campus also includes a tiered seating large group instruction space that accommodates 128 occupants and a full serving kitchen with a cooler/freezer, dry storage area and a secure designated delivery area at the back of the building. Both the large group instruction and kitchen serving lines open up to the 6,000 sf two story volume Commons Area. This space is the hub of the building and will be utilized by students as a collaboration space and dining area. The Commons Area is also anchored by the Information Literacy Center and a set of Learning Stairs. These areas provide unique opportunities for delivering instruction to students and provide flexibility for presentations to small or large groups.

26. Project # 3 size (SF)

66,500 sf

27. Project # 3 Location

Harlingen, Texas

28. Project # 3 Cost

\$15,036,000

29. Project # 3 Completion Date

October 2021

30. Project # 3 Owner

Harlingen CISD

31. Project # 3 Construction Delivery Method

Competitive Sealed Proposal

32. Project # 3 Project Contact Person

Oscar Tapia, Assistant Superintendent of District Operation/School Safety

33. Project # 3 Project Person Phone #

(956) 427-3300

34. Project # 4 Name

Hanna ECHS New Gymnasium Facility

35. Project # 4 Nature of Project

Total Building Square footage is 40,409 SF (38,552 sf at slab – 1,857 sf mechanical mezzanine) a. Main Entry Area and Concessions/Restrooms – 5,680 SF b. Main Court Area – 26,895 SF c. Team Dressing Room – 5,976 SF d. Mechanical Mezzanine space – 1,857 SF

36. Project # 4 Function of the Building

New Gymnasium Facility for Brownsville, ISD, which includes: - Exterior milling area with an aluminum canopy and exterior window from ticket booth. -Main Entry/Vestibule is a large volume space with a concessions area and large restrooms to accommodate Home and Visitor spectators. -The main court space has (3) full size basketball courts and (3) volleyball courts with a floating wood floor system and acoustical tectum panel - Retractable Bleachers have a Total Spectator Capacity of 2,160.....(1,080 spectators per side) -The Team Dressing Room Areas are arranged by Home and Visitor with both Boys and Girls locker rooms. (15) People per locker room. Each side has a coach's office and includes a Training Room and Laundry space. There is also a large storage space for athletic equipment.

37. Project # 4 size (SF)

40,409 sf

38. Project # 4 Location

Brownsville, TX

39. Project # 4 Cost

\$8,375,293

40. Project # 4 Completion Date

November 2020

41. Project # 4 Owner

Brownsville ISD

42. Project # 4 Construction Delivery Method

Competitive Seal Proposal

43. Project # 4 Project Contact Person

Martin Espinosa, Project Facilities Manager

44. Project # 4 Project Person Phone #

(956) 698-2022

45. Project # 5 Name

Brillante Academy

46. Project # 5 Nature of Project

The Brillante Academy Los Ebanos Development project is a PK -8 Charter School.

47. Project # 5 Function of the Building

In Phase I there will be a 14-acre site development that will include One-Story Buildings for Administration, Primary Classrooms, Gymnasium and Cafeteria. There will also be a renovation of an existing metal building that will be converted to an open-air pavilion with restrooms. The site will also include queuing circulation drives for parent and drop-off and pick-up along with a bus loop, parking areas for staff/visitors, natural turf soccer field, security perimeter fencing with access gates and full landscaping and irrigation throughout. Phase II has been Master Planned and will include the Middle School Classroom and Administrative support spaces.

48. Project # 5 size (SF)

40,000sf

49. Project # 5 Location

Palmview, Texas

50. Project # 5 Cost

\$8,000,000

51. Project # 5 Completion Date

Estimated to be completed: October 2023

52. Project # 5 Owner

Seton Education Partners

53. Project # 5 Construction Delivery Method

Competitive Sealed Proposal

54. Project # 5 Project Contact Person

Aaron Brenner, General Partner

55. Project # 5 Project Person Phone #

(713) 303-6447

2 List of Claims, judgements, arbitration proceeding or suits pending or outstanding against your company or its officers, if any. Summarize the nature of the such claim below.

Item Attributes

1. List claims (Date, Owner, Summary of each claim)

None

3 Select the Correct Statement

Item Attributes

1. Select the correct Statement

- **General Contractor:** My company will utilize 100% of its own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work.
- **Joint venture or other type of arrangement:** Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project.

General Contractor (General Contractor)
 Joint venture or other type of arrangement (Joint venture or other type of arrangement)

2. Describe the sufficient resources your company has to manage staff and successfully perform the work. If this does not pertain to your answer, disregard.

Noble will assign a full time Project Manager and one full time Superintendent to this project. An assistant superintendent will be available as needed, typically at the beginning and ending of project. A Project Executive will be assisting both the Project Manager and Superintendent as needed. A safety manager will be available to assure a safe construction site.

3. Describe the type of arrangements. If using sub-contractors by trade that will be assigned to this project.

Noble will competitively request subcontractor proposals for all trades according to procurement laws. The best valued subcontractors will be awarded their scope.

4 List names of the individuals who will be assigned for the duration of the project.

Define their roles and provide a resume for each. The resume should describe experience relevant to the Project for the Design/Preconstruction Phase and Construction Phase services.

Item Notes: (i.e., Estimator, Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist).

Item Attributes

1. Staff #1 Name

Mauricio Gomez

2. Staff #1 Title

Project Executive

3. Staff #1 Job Description

He serves as a Project Executive and he is responsible for planning and coordinating projects in the Construction group. He is in constant communication with Project Managers and Superintendents for all CMAR, DB and CSP projects and assist them in their project needs.

4. Staff #1 Years with firm

6 years

5. Staff #1 Years in the industry

25 years

6. Staff #2 Name

Ramon Dones

7. Staff #2 Title

Project Manager

8. Staff #2 Job Description

Ramon has over 23 years in the construction industry. Some of his duties and responsibilities involve construction administration on a daily basis. In doing so, he is heavily involved with budgeting, project management, subcontractor and vendor negotiations.

9. Staff #2 Years with firm

1 year

10. Staff #2 Years in the industry

23 years

11. Staff #3 Name

Bert Lozano

12. Staff #3 Title

General Superintendent

13. Staff #3 Job Description

Heriberto (Bert) Lozano brings over 20 years of experience to Noble Texas Builders. He serves as a General Superintendent and is primarily responsible for overseeing the project from inception to completion. Bert is in charge of maintaining a clean and safe work environment for all subcontractors while always refining his leadership skills to achieve maximum productivity to keep the time-line on track. He strives for customer satisfaction by instilling the same pride in a job well done that had helped him succeed and meet deadlines.

14. Staff #3 Years with firm

6 years

15. Staff #3 Years in the industry

22 years

16. Staff #4 Name

David Lerma

17. Staff #4 Title

Safety Coordinator

18. Staff #4 Job Description

David has over 39 years experience in the construction industry. Prior to joining Noble, he served 10 years as Safety Coordinator in large commercial construction. His field skills include communications, identifying hidden hazards, leadership training, safety training, accountability, management problem solving, supervising and incident investigations.

19. Staff #4 Years with firm

3 years

20. Staff #4 Years in the industry

39 years

21. Staff #5 Name

Steven Delgado

22. Staff #5 Title

Director of Estimating

23. Staff #5 Job Description

Steven is responsible for overseeing day to day operations for Preconstruction Services including preparation of hard bid estimates, conceptual estimates, and developing various levels of Guarantee Maximum Price proposals through the progressing levels of design. Steven has over 11 years experience in the construction industry.

24. Staff #5 Years with firm

5 years

25. Staff #5 Years in the industry

11 years

26. Staff #6 Name

Juan Delgado

27. Staff #6 Title

Vice President

28. Staff #6 Job Description

Juan Delgado has over 19 years' experience in the construction industry. He serves as the Vice President for the Construction Group. He supports Project Executives, Project Managers and Superintendents within his group on their operations to ensure project deliverables and goals. What he enjoys most about his role is that he provides leadership and support to team members in order to be more efficient and see them grow within the organization.

29. Staff #6 Years with firm

7 years

30. Staff #6 Years in the industry

19 years

31. Describe your organization's concepts for working in a team relationship with the Owner and Architect during the design and construction for major projects. What is your experience working with other Owner consultants (e.g., a program manager) thorough

Communication and teamwork are key elements of a successful project. The team engaging to gain a full and clear understanding of the program for the building's intended use and receiving feedback from the end user are vital to providing MISD with a superior product when the keys are turned over. During design, we have key members from Noble, including the Project Manager and Superintendent, participate in the Design Charettes to understand the intentions behind the design intent. By doing this, we are able to assure that the original design concept is followed through to the end. During design, Noble is responsible for coordinating all parties with tasks, responsibilities, and timelines to progress to the final design of the construction documents. This is accomplished by creating constructability reports, aligning end-user needs with the design intent, and assuring materials and equipment specified are available to meet the schedule parameters of the project. At Noble, we have utilized this approach with different Owner Consultants and all of them have been a success.

32. Describe team organizational chart, lines of authority and proposed time committed during the Design/Preconstruction Phase and Construction Phase services.

Reference attached Organizational Chart.

33. Describe history of working with the design consultant team in delivering higher education, K-12 and design build services within the region.

Noble Texas Builders has had the privilege of working with GMS Architects and their consultants on multiple K-12 projects in the Rio Grande Valley. The most relevant are the major renovations performed at STISD Beta Campus and Health's Professions in Mercedes.

Currently, Noble and GMS are working on the following projects:

- Rancho Verde Middle School for Los Fresnos CISD – New Middle School 154,000SF
- Cameron County/SPI – New Administration 2 story Building 12,000SF
- Texas A&M/Port of Brownsville – Renovation for the New Advanced Manufacturing Program

34. Identify the licensed professional architects and engineers within your team who are licensed by the State of Texas.

GMS Architects (Architect)

- Rudy Gomez, AIA
- Roan Gomez, AIA
- David Monreal, AIA

ETHOS Engineering (MEP Engineer)

- Guillermo Quinatnilla
- Cesar Gonzalez, PE
- Rajesh Kapileshwarim PE, LEED AP

Green, Rubiano & Associates (Structural Engineer)

- Rolando Rubiano, PE
- Heriberto Cavazos, PE

Javier Hinojosa Engineering (Civil Engineer)

- Javier Hinojosa, PE

35. Has any complaint been filed with the State of Texas against any principal of your firm, or anyone identified in response to Section 1.1? (If the answer is yes, please explain below)

No complaints have been filed with the State of Texas against any principal of Noble Texas Builders.

5 List all projects that your company currently has in progress.

Item Attributes

1. Project #1 Project Name

Los Fresnos MS

2. Project #1 Location

205 Rancho Alto. Brownsville, TX

3. Project #1 Owner

Los Fresnos CISD. Rolando Borrayo, Director Facilities & Maintenance 956-832-2085

4. Project #1 Project Amount

\$33,564,054

5. Attribute deleted as part of an Addendum

6. Project #1 Percent Completed

51%

7. Attribute deleted as part of an Addendum

8. Project #1 Schedule Completion Date

6/15/2023

9. Attribute deleted as part of an Addendum

10. Project #1 Construction Delivery Method

Competitive Seal Proposal

11. Attribute deleted as part of an Addendum

12. Project #2 Project Name

The Reese ProBar Renovation

13. Project #2 Location

202 S 1st St, Harlingen, TX 78550

14. Project #2 Owner

ProBAR, Delia Avila, Director of Business Administration 956-368-4139

15. Project #2 Project Amount

\$5,424,739

16. Attribute deleted as part of an Addendum

17. Project #2 Percent Completed

12%

18. Attribute deleted as part of an Addendum

19. Project #2 Schedule Completion Date

6/21/2023

20. Attribute deleted as part of an Addendum

21. Project #2 Construction Delivery Method

Competitive Seal Proposal

22. Attribute deleted as part of an Addendum

23. Project #3 Project Name

Isla Blanca Administration Building

24. Project #3 Location

33248 State Park Rd. 100 South Padre Island, TX 78597

25. Project #3 Owner

Cameron County RMS, Hondo Garcia, Construction Manager 956-621-5571

26. Project #3 Project Amount

\$4,549,354

27. Attribute deleted as part of an Addendum

28. Project #3 Percent Completed

46%

29. Attribute deleted as part of an Addendum

30. Project #3 Schedule Completion Date

2/10/2023

31. Attribute deleted as part of an Addendum

32. Project #3 Construction Delivery Method

Construction Manager at Risk

33. Attribute deleted as part of an Addendum

34. State your company's total worth of work in progress and under contract.

\$43540729

6 Problem or Challenge

Item Attributes

1. Describe the most common problem or challenge that you have encountered in school construction and your method for addressing the issue.

The availability of materials has been the most common challenge since the Pandemic. The key to overcoming this issue has been to procure key trades, such as Steel, Mechanical and Electrical equipment early on. In a Design-build scenario, this could be achieved by issuing early GMP packages, where equipment with a long lead time can be released early while the rest of the design is taking place. This has proven to be beneficial and guarantees material and equipment when needed.

7 Experience

Item Attributes

1. What do you bring to the project team that is unique?

At Noble+GMS, our culture of caring sets us apart. Our team is committed to "...Inspiring Hope, Improving Lives & Strengthening the Communities We Live In". As a team for McAllen ISD, we (Noble, GMS, Ethos & GRA) bring a proven track record of working together and delivering projects on time and under budget. This entire team is currently working together on three other projects. Our team is uniquely qualified to provide excellent design-build services for McAllen ISD, with a depth of experience in K-12 & Design/Build Projects. We can help guide McAllen ISD as you continue to expand your facilities program in support of the school district's needs. Our experience with K-12 & Design/Build provides you with the knowledge of the challenges and opportunities ahead.

- School Safety Plan:

- o At Noble+GMS we Plan Carefully, Communicate Effectively, and Adjust when Necessary. When schools undergo renovations or expansions, meticulous planning and follow-through are necessary to ensure the safety of students and staff. In addition, work must be completed in a way that does not disrupt classes and other school activities.

- o All team members on-site are background checked and are given an ID Badge to allow access to the site. Noble+GMS has a robust security badging system that will be implemented in this project. Noble is currently developing protocols with McAllen ISD for all current and future projects. We must always lead by example in an effort to meet our client's expectations.

- o We believe that school safety is a cross-functional responsibility, and every team member's participation drives the success of the overall safety protocols.

- Ongoing Support- Cradle to Grave

- The Noble+GMS team believes in building a relationship with the owner and not just a building. With over 65 years of combined experience, Noble+GMS understands the importance of our client's facilities. Therefore, we have a dedicated team, Noble Building Solutions, that was developed to assist in our client's needs during and after the warranty. Noble Building Solutions is local and is available 24/7.

- Robust Job Order Contracting services.

- Energy Efficiency

- The Noble+GMS team has several team members who have earned LEED accreditation and our goal is to find proactive ways to always improve the life cycle of the building by implementing Energy Efficiency Element into the design.

- Self-Perform

- Our team has the ability to self-perform specific scope of work packages. Our goal is to identify "Best Value" in supporting our clients, this value comes in several forms: Quality Control, Cost Savings, Schedule Control, and provides Transparency.

- Noble Leadership Academy:

- Teach Externship/Student Internship Program

When working on K-12 school projects, there is an opportunity to expose students to the construction industry as a vocational/management choice, as well as demonstrate the construction manager's commitment to safety. OSHA has created a 10-hour outreach training program to teach a construction safety class to students. This may be done in conjunction with the school's CTE program. The classes are free and will be offered to students that participate in our job site tours. Besides raising safety awareness during the construction project, offering this class exposes students to construction careers as an option.

- Technology:

- At Noble we believe in staying up to date with the latest technology. With 3D BIM modeling to detect potential clashes early in the design, OpenSpace to record live As-Built information daily, Procore to manage day-to-day operations and have information available anytime, anywhere, and Field Engineering Robotics to guarantee precision surveying and avoid potential utility conflicts during construction. These are among some of the latest tools which increase efficiency, quality, and productivity on site.

8 Ability to Complete Projects

Item Attributes

1. Describe your firm's ability to complete projects on schedule, including the number of projects that have not been completed on schedule, and the reasons for such delay.

Noble has completed 100% of projects as General Contractor - Always On Schedule / ZERO Noble Change Orders.

Since the founding of our company, we have completed every project on or ahead of schedule. We understand how critical it is to meet every milestone to keep the project moving forward. Noble has a record of never initiating a change order on any project unless requested by the owner. We work tirelessly with our clients and the design team to work through issues "before" they become a potential delay.

Through our LEAN Construction initiatives, we can control the project schedule daily and be able to react quickly if we see a project may fall behind. Through "Pull Planning" sessions, we have subcontractors commit to the manpower needs to meet the project schedule. This tool allows superintendents on-site to monitor the number of people working daily and communicate with subcontractors if the committed people are not on site. In case a project is falling behind, we can determine the reason for the delay immediately and react on time to place the project back on track. With the implementation of LEAN Construction on all our job sites, we have been able to meet and exceed the contractual schedules. This tool has been very helpful with the current supply chain issue challenges since we are able to foresee early those items that could potentially affect the overall schedule allowing us to plan in advance to meet the client schedule deadlines.

9

Estimating and Cost Control Measures

Item Attributes

1. Describe your project estimating system for developing cost estimates based on Schematic Design and Design Development documents.

Noble believes in the practice of initiating involvement with our subcontractors and suppliers in the early phases of the design and cost estimating process. This enables us to quickly move pricing from the conceptual stages to the GMP stage. Our estimating department will use a wide array of systems such as On-Screen Takeoff, Cost OS, OpenSpace, and BuildingConnected to construct cost estimates using the readily available design development documents to forecast and establish a solid estimate.

2. Describe your project estimating system for developing the Guaranteed Maximum Price (“GMP”) Proposal.

MISD interests are best served when all the talents and knowledge of the experts are put to efficient use from concept to completion of the project. We seek the thoughts and input of not only the design team but also the district’s users and managers. As decisions are made and design moves towards a finished product, our team will communicate important information to our support staff and industry partners so these choices can be reflected in the continuously refined budget estimates. The entire team will know how decisions affect the construction process and final costs. In our production budgets, each subcontractor/material supplier, line of work, or piece of equipment rental is assigned an individual cost code. Each of these items is tracked as they are incurred on a daily, weekly, and monthly basis. Monthly project review meetings are held with the project team and officers to review costs. Cost control will be monitored by receiving feedback from specialty subcontractors.

Noble’s program for managing subcontractors and material suppliers was developed as a Best Practices Guide. The purpose of this management program is to utilize construction personnel with extensive construction knowledge in the early stages of the project to ensure that it is buildable while also being cost-effective. This program can help minimize delays as well as cost overruns of MISD College Academy School project.

TEAM APPROACH

The design team and our trade contractors will provide vital budget information to get to the GMP. The initial project estimate will determine all initial quantities and budgets for the Workforce Training Center.

Noble will take the lead on the following to establish the GMP:

- Establish a budget for each phase of work
- Prepare subcontractor bid packages
- Host pre-bid meetings for all packages
- Analyze bids for the best value

The Noble team will collaborate with all stakeholders to be sure that the design does not exceed the budget.

3. How will your firm monitor and track buyout savings during the buyout process, and how will you communicate this information to the District?

During the buyout process, our Director of Estimating, Superintendents, and Project Managers will review all the subcontractor’s bids to ensure their compliance with the contract document scopes. Those in compliance will be reviewed for best value and recommendation to the Owner. A meeting with the potential best-valued subcontractors is scheduled to personally review their scope completeness. Any gaps of scope discovered during the meeting are discussed and, if necessary, a value is established for those gaps. After meeting with all best-value subcontractors, and determining their completeness with the required scope, then a recommendation is given to the client to move forward with that subcontractor. Longer lead time trades will be procured first to avoid any delays and to ensure that their materials and equipment arrive according to the project schedule. Buyout savings are constantly being monitored by all parties, with the goal to release them early for the client’s use.

4. How will contingencies be managed through the completion of the Project?

Noble plans and prepares ahead of time to circumvent any possible foreseeable situations. We advise the owner through the assumptions and clarifications submission, and if the owner approves, those funds will be separated in case they can be utilized.

Contingency funds may be used at the discretion of MISD. If any changes are needed to the scope and/or the architect makes revisions, those funds, if approved, will serve as a backup for any unforeseen conditions or owner requested changes. Towards the end of the project, 100% of the contingency will be given back to MISD, along with any other cost savings measures under the Design-Build agreement.

Response Total: 0



AIA[®] Document A141[™] – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

2023-116 Noble Texas Builders, LLC through 2023-1023 Request for Qualifications (RFQ) / Request for Proposals (RFP) Design-Build Firms for University of Texas Rio Grande Valley (UTRGV) / McAllen Independent School District (MISD) Collegiate Academy.

THE OWNER:

(Name, legal status and address)

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 N. 23rd Street
McAllen, Texas 78501
Phone:956-618-6000

THE DESIGN-BUILDER:

(Name, legal status and address)

Noble Texas Builders, LLC, a Limited Liability Company of the State of Texas
108 S. Main Street
La Feria, Texas 78559
Phone:956-277-0708
E-mail:juan.delgado@nobletx.com

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the Second day of November in the year TWO THOUSAND TWENTY-TWO.

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 DESIGN-BUILDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

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.

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN-BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

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

§ B.2.1.1 Workers' Compensation and Employers Liability Insurance Coverage.

.1 Definitions:

- a) Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.
- b) Duration of the Project. Includes the time from the beginning of the work on the Project until the Design-Builder's/person's work on the Project has been completed and accepted by the governmental entity.
- c) Persons providing services on the Project ("subcontractor" in §406.096). Includes all persons or entities performing all or part of the services the Design-Builder has undertaken to perform on the Project, regardless of whether that person contracted directly with the Design-Builder 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 which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

.3 The Design-Builder must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

.4 If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the Project, the Design-Builder 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.

.5 The Design-Builder shall obtain from each person providing services on a Project, and provide to the governmental entity:

.5.1 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
- .5.2 no later than seven (7) days after receipt by the Design-Builder, 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.
 - .6 The Design-Builder shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
 - .7 The Design-Builder shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Design-Builder knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
 - .8 The Design-Builder shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
 - .9 The Design-Builder shall contractually require each person with whom it contracts to provide services on a Project, to:
 - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .9.2 provide to the Design-Builder, 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;
 - .9.3 provide the Design-Builder, 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;
 - .9.4 obtain from each other person with whom it contracts, and provide to the Design-Builder:
 - (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;
 - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - .9.6 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
 - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
 - .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Design-Builder is representing to the governmental entity that all employees of the Design-Builder who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Design-Builder to administrative penalties, criminal penalties, civil penalties, or other civil actions.
 - .11 The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder which entitles the governmental entity to declare the contract void if the Design-Builder does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity. [28 TAC §110.110(c)(7)]

§ B.2.1.2 Design-Builder shall provide Commercial General Liability Insurance, including coverage for Personal Injury Liability, Independent Design-Builder's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Design-Builder's (or Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties in the following amounts:

Commercial General Liability:

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
Personal & Advertising Injury	\$1,000,000.00 each person
Products and Completed Operations	\$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Independent Contractors	(Same limits as above, but not including umbrella coverage as noted in B.2.1.5)
Contractual Liability	(Same limits as above, , but not including umbrella coverage as noted in B.2.1.5)

If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by the Owner. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner shall be named, by way of endorsement, as an additional insured. The general liability policy shall also include coverage extended to apply to completed operations, asbestos hazards (if the project involves work with asbestos), and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with Owner. The policy shall include an endorsement to extend the policy's limits specifically to the project in question.

§ B.2.1.3 Comprehensive Automobile Liability Insurance (owned, non-owned and hired vehicles). With coverage as follows:

Automobile Liability:

Bodily Injury/Property Damage	\$1,000,000.00 combined single limit
Property Damage	\$1,000,000.00 each occurrence

Such coverage shall include owned, hired and non-owned vehicles. Policy shall be endorsed to include a waiver of subrogation against Owner and shall include the Owner as an additional insured.

§ B.2.1.4 Builder's Risk Coverage: In addition to the insurance described above, the Design-Builder shall obtain at its expense, and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the project involves materials and supplies needed for additions to, or renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, the Owner shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be written jointly in the names of the Owner, the Design-Builder, Subcontractors, and Sub-Subcontractors as their interests may appear. The policy shall have endorsements as follows:

- .1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- .2 Loss, if any, shall be adjusted with and made payable to the Owner as trustee for the insureds as their interests may appear.
- .3 The right of subrogation under the policy shall be waived as to the Owner.

§ B.2.1.5 Umbrella/Excess Liability Coverage. The Design-Builder shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Design-Builder for an amount of not less than TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) per occurrence combined limit Bodily Injury (including death) and Property

Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner, by way of endorsement, shall be named as an additional insured. No aggregate shall be permitted for this type of coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

§ B.2.1.6 GENERAL INSURANCE POLICY REQUIREMENTS

(Paragraphs deleted)

§ B.2.1.6.1 Notice of Cancellation to Owner. Prior to commencing any work, Design-Builder shall furnish to Owner at the address shown below Certificates of Insurance and if requested by Owner a copy of the actual policies (or other evidence deemed sufficient by the Owner) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Design-Build Documents, certifying compliance with the minimum required coverage. Design-Builder shall notify the Owner in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide the Owner thirty (30) days advance written notice of such cancellation or reduction.

§ B.2.1.6.2 Company Rating. Insurance shall be carried with financially responsible insurance companies, licensed in the State of Texas, with an A.M. Best Rating of A (-) VI or better, if Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Design-Builder in accordance with this Contract on the basis of its not complying with the Design-Build Documents, Owner will notify Design-Builder in writing thereof. Design-Builder will provide to Owner such additional information in respect of insurance provided by him as Owner may reasonably request.

§ B.2.1.6.3 If Design-Builder fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the Owner may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement; however, procuring of said insurance by the Owner is an alternative to other remedies the Owner may have, and is not the exclusive remedy for failure of Design-Builder to maintain said insurance or secure such endorsement. In addition to any other remedies the Owner may have upon Design-Builder's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Owner shall have the right to order Design-Builder to stop work hereunder, and/or withhold any payment(s) which become due, to Design-Builder hereunder until Design-Builder demonstrates compliance with the requirements hereof. Nothing herein contained shall be construed as limiting in any way the extent to which Design-Builder may be held responsible for payments of damages to persons or property resulting from Design-Builder's performance of the Work covered under this Agreement.

§ B.2.1.6.4 The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Design-Builder.

§ B.2.1.6.5 The Owner shall be entitled, upon request, and without expense, to receive complete copies of the policies with all endorsements and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon the Parties or the underwriter of any of such policies. Damages caused by the Design-Builder and not covered by insurance shall be paid by the Design-Builder.

§ B.2.1.6.6 If any insurance company for the Design-Builder, which company provides insurance required under the Design-Build Documents, becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Design-Builder shall procure, immediately upon first notice of such occurrence and without cost to the Owner, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.

§ B.2.1.6.7 Each insurance policy to be furnished by the Design-Builder shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

Init.

- .1 That the Owner shall be named as an additional insured on all liability coverages.
- .2 Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail. Design-Builder shall also notify Owner, within twenty-four (24) hours after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.
- .3 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Design-Builder as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.
- .4 All provisions of the Design-Build Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

§ B.2.1.6.8 Concerning the insurance to be furnished by the Design-Builder, it is a condition precedent to acceptability that:

- .1 All policies must comply with the applicable requirements and special provisions of this Article.
- .2 Any policy evidenced by a certificate of insurance or submitted for review shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and the Owner's decision regarding whether any policy contains such provisions, contrary to this requirement, shall be final.
- .3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that are otherwise acceptable to the Owner.

§ B.2.1.6.9 The Design-Builder agrees to the following special provisions:

- .1 The Design-Builder hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article.
- .2 Insurance companies issuing the insurance policies and the Design-Builder shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Design-Builder.
- .3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Design-Builder (or any subcontractors) shall not relieve the Design-Builder of any responsibility or liability for damage or accidents as set forth in the Design-Build Documents. The bankruptcy, insolvency or denial of liability of or by the Design-Builder's insurance company shall likewise not exonerate or relieve the Design-Builder from liability.
- .4 The Owner reserves the right to review the insurance requirements of this Article during the effective period of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the Owner, based upon changes in statutory law, court decisions or the claims history of the field as well as that of the Design-Builder. The Design-Builder agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Design-Builder shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.
- .5 No special payments shall be made for any insurance policies that the Design-Builder and subcontractors are required to carry; all are included in the Contract Sum.

§ B.2.1.6.10 Any insurance policies required under this Article may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Init.

Type**Penal Sum (\$0.00)**

§ **B.2.2.1** The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total combined accepted bid(s).

§ **B.2.2.2** The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total bid as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ **B.2.2.3** The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. 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. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this project.

§ **B.2.2.4** Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, 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 an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ **B.2.2.5** All bonds will be reviewed by the Owner for compliance with the Design-Build Documents prior to execution of the contract.

§ **B.2.2.6** All bonds shall be originals. The Design-Builder 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-Authority. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ **B.2.2.7** Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ **B.2.2.8** Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Design-Builder's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Design-Builder shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Design-Builder may be suspended, and all payment or money due to the Design-Builder withheld.

§ **B.2.2.9** By inclusion of this Subparagraph B.2.2.9 in the Design-Build Documents, the surety which issues the bonds is hereby notified that the Owner, and its agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make recommendations regarding payments, and inspect the Work in the presence of the Design-Builder and the Owner. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner its agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Design-Builder, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§ **B.2.2.10** Notwithstanding any provision to the contrary contained in the bond or the bonded contract, the bond guarantees only the performance of the installation portion of the contract[, and shall not be construed to guarantee the performance of (i) any efficiency or energy savings guarantees, (ii) any support or maintenance service agreement, or

(iii) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the contract].

ARTICLE B.3 OWNER'S INSURANCE [Section Deleted.]

(Paragraphs deleted)

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

Schedule 1 Certificate of Insurance



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

**Name Of Additional Insured Person(s)
Or Organization(s):**

Location(s) Of Covered Operations

Blanket as required by written contract

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- 1. Your acts or omissions; or
- 2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- 1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

NAMED INSURED: Noble Texas Builders, LLC

POLICY NUMBER: 6080436520

COMMERCIAL GENERAL LIABILITY
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Blanket as required by written contract	

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

	<h2 style="margin: 0;">Contractors' General Liability Extension Endorsement</h2>
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It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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Contractors' General Liability Extension Endorsement

1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **H.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **H.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.



Contractors' General Liability Extension Endorsement

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or
 - b. the acts or omissions of those acting on the **Named Insured's** behalf,



Contractors' General Liability Extension Endorsement

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:

- a. on the effective date of this **Coverage Part**; or
- b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.



Contractors' General Liability Extension Endorsement

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury or property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions **k.** and **l.** and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to your product arising out of it, or any part of it except when caused by or resulting from:

- (1) fire;
- (2) smoke;
- (3) collapse; or
- (4) explosion.

l. Damage to Your Work

Property damage to your work arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

- (1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or
- (2) If the cause of loss to the damaged work arises as a result of:
 - (a) fire;
 - (b) smoke;
 - (c) collapse; or



Contractors' General Liability Extension Endorsement

(d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage to your product and your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage to your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury or property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion p. **Electronic Data** and replace it with the following:

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:



Contractors' General Liability Extension Endorsement

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

C. The following definition is added to **DEFINITIONS**:

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.



Contractors' General Liability Extension Endorsement

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.



Contractors' General Liability Extension Endorsement

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. **DEFINITIONS** is amended to:



Contractors' General Liability Extension Endorsement

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:

a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

(1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

(2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

(1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and



Contractors' General Liability Extension Endorsement

(2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

b. delete Subparagraphs (a), (b), (c) and (d) of Paragraph 2.a.(1) of **WHO IS AN INSURED**.

D. The **Other Insurance** condition is amended to delete Paragraph b.(1) in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury**, **property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion j. **Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

j. Damage to Property

Property damage to:

(1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or



Contractors' General Liability Extension Endorsement

maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

- B. Under COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions c. through n. do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.



Contractors' General Liability Extension Endorsement

C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

D. Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

a. \$500,000; or

b. The Damage To Premises Rented To You Limit shown in the Declarations.

E. Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

A. LIMITS OF INSURANCE is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) \$15,000 unless a different amount is shown here: @ @ @ @ @ @ @ @ @ @ ; or

(2) the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

This Paragraph **B.** does not apply to medical expenses incurred in the state of Missouri.

18. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:



Contractors' General Liability Extension Endorsement

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph **(2)** of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a)** less than 75 feet long; and
- (b)** not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES, Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a)** the **Named Insured**; or
- (b)** any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.

2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.



Contractors' General Liability Extension Endorsement

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision **1. ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.

B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph **2.d.** is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3), (4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:



Contractors' General Liability Extension Endorsement

- A. Paragraph **1.b.** is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph **1.d.** is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

- 1. the **Named Insured's** ongoing operations; or
- 2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

- 1. is in effect or becomes effective during the term of this **Coverage Part**; and
- 2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

- 1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor
- 2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

- B. Condition **4. Other Insurance** is amend to add the following subparagraph **4.b.(1)(c)**:

This insurance is excess over:

- (c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.



Contractors' General Liability Extension Endorsement

C. **DEFINITIONS** is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



CNA PARAMOUNT
Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

I. WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:

A. in the performance of your ongoing operations subject to such **written contract**; or

B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:

- 1. the **written contract** requires you to provide the additional insured such coverage; and
- 2. this **coverage part** provides such coverage.

II. But if the **written contract** requires:

A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or

B. additional insured coverage with "arising out of" language; or

C. additional insured coverage to the greatest extent permissible by law;

then paragraph **I.** above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.

III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

A. coverage broader than required by the **written contract**; or

B. a higher limit of insurance than required by the **written contract**.

IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:

A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:

- 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- 2. supervisory, inspection, architectural or engineering activities; or

B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.

V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:

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Endorsement No:

Effective Date: 05/01/2022

Insured Name:

000200
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Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:**

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS is amended to add the following definition:**

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
 1. the **bodily injury or property damage**; or
 2. the offense that caused the **personal and advertising injury**;for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.



CONTRACTORS EXTENDED COVERAGE ENDORSEMENT - BUSINESS AUTO PLUS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. a. Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b. The insurance afforded by this provision **A.1.** does not apply to any such entity that is an **insured** under any other liability "policy" providing **auto** coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a. Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b. Does not apply to:
 - (1) **Bodily injury or property damage** caused by an **accident** that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an **insured** under any other liability "policy" providing **auto** coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an **insured** but only with respect to their legal liability for acts or omissions of a person, who qualifies as an **insured** under **SECTION II – WHO IS AN INSURED** and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An **employee** of yours is an **insured** while operating an **auto** hired or rented under a contract or agreement in that **employee's** name, with your permission, while performing duties related to the conduct of your business.

"Policy", as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

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C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to Section III, Paragraph A.3.:

With respect to any covered **auto**, any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a. \$60 per day, in lieu of \$20; subject to
- b. \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a. \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to Section III. Paragraph A.:

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered **auto** you lease, hire, rent or borrow without a driver; and
- b. Any covered **auto** hired or rented by your **employee** without a driver, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one **accident** or **loss** is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered auto. No deductible applies to **loss** caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned **autos**.
- e. Such physical damage coverage for hired **autos** will:
 - (1) Include loss of use, provided it is the consequence of an **accident** for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per **accident**.

E. Airbag Coverage

The following is added to Section III, Paragraph B.3.:

The accidental discharge of an airbag shall not be considered mechanical breakdown.

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F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered **auto** also applies to **loss** to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the **diminution in value** exclusion does not apply to:

- a. Any covered **auto** of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered **auto** of the private passenger type hired or rented by your **employee** without a driver for a period of 30 days or less, under a contract in that individual **employee's** name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a **diminution in value** loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for **loss** to a covered **auto** in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the **auto's** actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

- 1. Any **auto** you don't own, hire or borrow is a covered **auto** for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers", except:
 - a. An **auto** owned by that "executive officer" or a member of that person's household; or
 - b. An **auto** used by that "executive officer" while working in a business of selling, servicing, repairing or parking **autos**.

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered **auto**; and
- (2) Excess over any other collectible insurance.

- 2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are **insureds** while using a covered **auto** described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.:**

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- (4) Your **employees** may know of an **accident** or **loss**. This will not mean that you have such knowledge, unless such **accident** or **loss** is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.:**

- (6) Your **employees** may know of documents received concerning a claim or **suit**. This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an **accident** or **loss**.

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.:**

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.:**

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract.

That written contract must have been entered into prior to **Accident** or **Loss**.

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. paragraph C. is deleted and replaced by the following:

Bodily injury means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

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TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. Specific Waiver

Name of person or organization

- Blanket Waiver

Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations: All Texas Operations

3. Premium:

The premium charge for this endorsement shall be 2% percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Refer to Schedule of Operations

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.



CNA PARAMOUNT

Changes - Notice of Cancellation or Material Restriction Endorsement

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- EMPLOYEE BENEFITS LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- STOP GAP LIABILITY COVERAGE PART
- TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE PART
- SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY – NEW YORK DEPARTMENT OF TRANSPORTATION

SCHEDULE	
Number of days notice (other than for nonpayment of premium):	030
Number of days notice for nonpayment of premium:	N/A
Name of person or organization to whom notice will be sent:	PER SCHEDULE ON FILE
Address:	PER SCHEDULE ON FILE SAN ANTONIO TX 78259

If no entry appears above, the number of days notice for nonpayment of premium will be 10 days.

It is understood and agreed that in the event of cancellation or any material restrictions in coverage during the **policy period**, the Insurer also agrees to mail prior written notice of cancellation or material restriction to the person or organization listed in the above Schedule. Such notice will be sent prior to such cancellation in the manner prescribed in the above Schedule.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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NOTICE OF CANCELLATION TO CERTIFICATEHOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificateholders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificateholder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

All other terms and conditions of the policy remain unchanged

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

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Endorsement Effective Date:

Endorsement No:

Underwriting Company: The Continental Insurance Company

Endorsement Expiration Date:

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NOTICE OF CANCELLATION TO CERTIFICATE HOLDERS

It is understood and agreed that:

If you have agreed under written contract to provide notice of cancellation to a party to whom the Agent of Record has issued a Certificate of Insurance, and if we cancel a policy term described on that Certificate of Insurance for any reason other than nonpayment of premium, then notice of cancellation will be provided to such Certificate Holders at least 30 days in advance of the date cancellation is effective.

If notice is mailed, then proof of mailing to the last known mailing address of the Certificate Holder on file with the Agent of Record will be sufficient to prove notice.

Any failure by us to notify such persons or organizations will not extend or invalidate such cancellation, or impose any liability or obligation upon us or the Agent of Record.

All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective Date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy unless another expiration date is shown below.