

Board Workshop Agenda

Lake Travis Independent School District Board of Trustees

A meeting of the Board of Trustees of Lake Travis Independent School District will be held October 16, 2024, beginning at 6:00 PM in the Educational Development Center, Live Oak Room
607 RR 620 North
Austin, TX 78734.

The subjects to be discussed or considered, or upon which any formal action may be taken are listed below. Items do not have to be taken in the order shown on this agenda.

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6.	Memorandum of Understanding (MOU) for Lake Travis ISD and for the Juvenile Justice Alternative Education Program (JJAEP) Cooperative of Travis County	374
9.	Upcoming Meetings and Events	
A.	November 20, 2024, 6:00 p.m. - Regular Board Meeting, EDC	
B.	December 11, 2024, 6:00 p.m. - Regular Board Meeting, EDC	
C.	January 15, 2025, 6:00 p.m. - Regular Board Meeting, EDC	
10.	Closed Session - Trustees will adjourn into Closed Session as permitted by the Texas Government Code 551.001 et. seq.	

- A. Section 551.074 - Personnel Matters
 - 1. The Board will discuss the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of public employees or officials. (This may involve consultation with attorney as permitted under Section 551.071)
 - B. Section 551.071 - Consultation with Attorney
 - 1. The Board will discuss and receive legal advice from its attorney on matters which should be confidential under Texas Government Code Section 551.071 (2).
 - C. Section 551.072 - Deliberation Regarding Real Property
 - 1. The Board will discuss the purchase, exchange, lease or value of real property. (This may involve consultation with attorney as permitted under section 551.071.)
 - D. Section 551.0821 - School Board: Personally Identifiable Information About a Public School Student
 - 1. The Board will discuss personally identifiable information about a public school student.
 - E. Section 551.076 - Deliberation Regarding Security Devices or Security Audits; Closed Meeting. This chapter does not require a governmental body to conduct an open meeting to deliberate:
 - 1. The deployment, or specific occasions for implementation of security personnel or devices.
11. Adjournment



October 16, 2024
School Board Meeting
Special Recognition



Bee Cave Middle School
Commended Winner
Mark of Excellence/
National Wind Band Honors Project







Lake Travis High School
2025 National Merit Scholarship Program
Qualifying Students





LT High5 Award presented by High5 Round 1 Recipients





October 16, 2024
School Board Meeting
Special Recognition



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Bee Cave Middle School - Commended Winner, Mark of Excellence/National Wind Band Honors Project

RECOMMENDED ACTION

Special Recognition

RATIONALE

The 2023-2024 Bee Cave Middle School Honors Band has been selected as a Commended Winner in the Mark of Excellence/National Wind Band Honors Project by The Foundation for Music Education.

According to the Foundation for Music Education, the Mark of Excellence project seeks to recognize and award outstanding achievement in performance by middle and high school bands, choirs, and orchestras. The project gathers entries from throughout the United States and provides valuable feedback for all entrants. A unique competitive environment is created which allows ensembles to compare their performance quality to other outstanding groups from across the country. The top 25% of entrants are recognized as National Winners, with the second 25% named as Commended Winners. All entrants receive a compilation recording of the winning performances. Winners are recognized in regional and/or national publications and at national and regional conventions. It is hoped the adjudicator critiques and the compilation recordings will prove helpful in improving performances and will spread knowledge of quality literature.

From more than out of 450 total entries across 40 states, Bee Cave Middle School is among 25 middle schools to receive the Commended Winner designation in its classification. Additionally, this is the second time the Bee Cave Middle School Honors Band receives this honor.

Greg Demoore is the Director of Bands at Bee Cave Middle School

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Shannon Gill - Director of Fine Arts

Marco Alvarado - Executive Director for Communications & Community Relations

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

2025 National Merit Scholarship Program Qualifying Students

RECOMMENDED ACTION

Special Recognition

RATIONALE

Lake Travis High School principal Debbie Garinger is pleased to announce that 36 students have been recognized by the 2025 National Merit Scholarship Program. These students entered the program by taking the Preliminary SAT/National Merit Scholarship Qualifying Test (NMSQT) as high school juniors. Out of 1.3 million students, from approx. 19,000 schools nationwide, each of these students is among the 50,000 highest-scoring participants. More importantly, in the state of Texas, we had the second highest number of Commended Scholars (3,780) and Semifinalists (1,714) in the United States! According to the National Merit Scholarship Program, these students show exceptional academic ability and potential for success in rigorous college studies. Lake Travis High School proudly recognizes 14 National Merit Semifinalists and 22 Commended Scholars.

National Merit Semifinalist	National Merit Commended Scholars	
Ismail Ahmed	Maeve Acuna	Grace Pantazoplouos
Mikhail Alexeykin	Presley Blake	Alexander Raich
Thomas Grisamore	Dallas Brunson	William Sewell
Shashvath Iyer	Haedon Cunningham	Aanika Shrivastava
Rayshawn Jiang	Karthik Darisi	Shrivas Sreepathy
Rohan Jiang	Samuel Deblock	Alana Tempest
Grant Matherne	Shreyas Durga	Katie Vo
Nitika Mohnot	Evangeline Gatz	Sienna Watson
Radha Sreenivasan	Jacob Ittycheria	
Shriya Suryakumar	Keira Loseke	
Wyatt Szastak	Hamilton Mansky	
Maila Tempest	Ames Mayfield	
Anya Vikram	Brendan McCarthy	
Joy Zhou	Levi Mitchell	

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Debbie Garinger – Principal, Lake Travis High School

Mindy Smith – Counselor, Lake Travis High School

Marco Alvarado – Executive Director of Communications and Community Relations



ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

LT High5 Award presented by High5 – Round 1 Recipients

RECOMMENDED ACTION

Special Recognition

RATIONALE

The Lake Travis ISD Administration is pleased to introduce its new and improved employee recognition program, the "LT High5 Award presented by High5." Five times a year, three district employees will be recognized for outstanding service beyond self that positively impacts fellow colleagues, students, parents, and/or the Lake Travis community. Additionally, the administration is excited to announce High5 Lakeway as the official sponsor of the LT High5 Award.

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

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

- **Irene Baliaris** – Special Education Aide II, Bee Cave Elementary School
- **Brandon Pierce** – English Teacher, Lake Travis High School
- **Brook Roberts** – Special Services Coordinator, Curriculum & Technology

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Marco Alvarado - Executive Director of Communications & Community Relations

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

2024 School FIRST Rating Report

RECOMMENDED ACTION

Public Hearing. Information only.

RATIONALE

Lake Travis ISD has received its 2024 School Financial Integrity Rating System of Texas (FIRST) rating based on financial indicators per 19 Texas Administrative Code (TAC), Section 109.1001(e)(6). The school district's School FIRST rating is based upon an analysis of financial data for fiscal year ended August 31, 2023. If the district does not submit an appeal, the preliminary rating becomes final in November. Within two months of the release of the final ratings, each school district must announce and hold a public meeting to distribute a financial management report that explains the district's rating and its performance under each of the 21 indicators for the prior year. The first of two required published newspaper notices, to inform taxpayers of the meeting, may not be more than 30 days or less than 10 days prior to the public meeting in accordance with 19 TAC, Section 109.1005. The public meeting will take place at the regular scheduled meeting on October 16, 2024.

Lake Travis ISD scored a rating of "A = Superior Achievement" on the FIRST 2023-2024 ratings based on school year 2022-2023 financial data.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Brad Goerke – Director of Finance

ATTACHMENTS

2024 Schools FIRST Rating Management Report

MEETING DATE

October 16, 2024

Lake Travis Independent School District



2023–24 Ratings Report

October 16, 2024

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**Financial Integrity Rating System of Texas (FIRST)
Lake Travis Independent School District
2023-2024 Ratings based on School Year 2022-2023 data**

Executive Summary

Introduction

This is the 21st year of School FIRST (Financial Accountability Rating System of Texas), a financial accountability system for Texas school districts developed by the Texas Education Agency in response to Senate Bill 875 of the 76th Texas Legislature in 1999. The primary goal of School FIRST is to achieve quality performance in the management of school district’s financial resources, a goal made more significant due to the complexity of accounting associated with Texas’ school finance system.

The School FIRST accountability rating system assigns a letter grade to each district. An A = Superior Rating, B = Above Standard, C = Meets Standard or F = Substandard Achievement. Districts that receive the “Substandard Achievement” ratings under School FIRST must file a corrective action plan with the Texas Education Agency.

Major Changes to the School FIRST System

The School FIRST Management Report was updated to include an additional indicator beginning with ratings year 2023-2024 based on data from fiscal year 2022-23. The new Indicator 21 determines if the district has an adjusted repayment schedule for an overallocation of FSP funds.

Reporting Requirements under the School FIRST System

Under School FIRST, every school district in Texas is required to prepare an annual financial management report that includes the following:

- A. The district’s financial management performance rating provided by the Texas Education Agency (TEA) based on its comparison with indicators established by the Commissioner of Education for the state’s new Financial Accountability System.
- B. The district’s financial management performance under each indicator for the current and previous years’ financial accountability ratings;
- C. Additional information required by the Commissioner of Education. Under Chapter 109, the Commissioner requires certain disclosures, as follows:
 - 1. A copy of the superintendent’s current employment contract. This must disclose all compensation and benefits paid to the superintendent;

2. A summary schedule for the fiscal year (12-month period) of total reimbursements received by the superintendent and each board member;
3. A summary schedule for the fiscal year of the dollar amount of compensation and/or fees received by the superintendent from another school district or any other outside entity in exchange for professional consulting and/or other personal services;
4. A summary schedule for the fiscal year of the total dollar amount by the executive officers and board members of gifts that had an economic value of \$250 or more in the aggregate in the fiscal year. This reporting requirement only applies to gifts received by the school district's executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, as a person related to another person within the first degree by consanguinity or affinity) from an outside entity that received payments from the school district in the prior fiscal year, and gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member, or matter related to attendance at education-related conferences and seminars whose primary purpose is to provide continuing education;
5. A summary schedule for the fiscal year of the dollar amount by board members for the aggregate amount of business transactions with the school district. This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members;
6. Additional information that the district's board of trustees deems useful.

Publicizing the District's Financial Report and Rating

Within two months of receiving the final financial accountability rating school districts are required to distribute the financial management report to attendees at a public hearing for School FIRST. The board of trustees is to have the public hearing at a district facility.

Notice of the hearing, including date, time and location, must be provided to a newspaper of general circulation in the district once a week for two weeks prior to holding the public meeting. The first notice may not be placed more than 30 days or less than 10 days prior to the public hearing. District staff should have copies of the report ready to hand out to attendees at the public hearing and to anyone that requests a copy after the meeting.



Financial Integrity Rating System of Texas

2023-2024 RATINGS BASED ON SCHOOL YEAR 2022-2023 DATA - DISTRICT STATUS DETAIL

Name: LAKE TRAVIS ISD(227913)		Publication Level 1: 8/8/2024 6:33:40 PM	
Status: Passed		Publication Level 2: 8/8/2024 6:33:40 PM	
Rating: A = Superior Achievement		Last Updated: 8/8/2024 6:33:40 PM	
District Score: 94		Passing Score: 70	
#	Indicator Description	Updated	Score
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the November 27 or January 28 deadline depending on the school district's fiscal year end date of June 30 or August 31, respectively?	4/19/2024 6:26:34 PM	Yes
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	4/19/2024 6:26:34 PM	Yes
3	Was the school district in compliance with the payment terms of all debt agreements at fiscal year end? (If the school district was in default in a prior fiscal year, an exemption applies in following years if the school district is current on its forbearance or payment plan with the lender and the payments are made on schedule for the fiscal year being rated. Also exempted are technical defaults that are not related to monetary defaults. A technical default is a failure to uphold the terms of a debt covenant, contract, or master promissory note even though payments to the lender, trust, or sinking fund are current. A debt agreement is a legal agreement between a debtor (= person, company, etc. that owes money) and their creditors, which includes a plan for paying back the debt.)	4/19/2024 6:26:34 PM	Yes
4	Did the school district make timely payments to the Teachers Retirement System (TRS), Texas Workforce Commission (TWC), Internal Revenue Service (IRS), and	4/19/2024 6:26:34 PM	Yes

	other government agencies? (If the school district received a warrant hold and the warrant hold was not cleared within 30 days from the date the warrant hold was issued, the school district is considered to not have made timely payments and will fail critical indicator 4. If the school district was issued a warrant hold, the maximum points and highest rating that the school district may receive is 95 points, A = Superior Achievement, even if the issue surrounding the initial warrant hold was resolved and cleared within 30 days.)		Ceiling Passed
			1 Multiplier Sum
5	Was the total net position in the governmental activities column in the Statement of Net Position (net of accretion of interest for capital appreciation bonds, net pension liability, and other post-employment benefits) greater than zero? (If it is not, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement, unless the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership. If the school district has an increase of students in membership over 5 years of 7 percent or more or 1,000 or more students in membership, the maximum points and highest rating that the school district may receive is 89 point, B = Above Standard Achievement).	4/19/2024 6:26:34 PM	Ceiling Passed
6	Was the average change in (assigned and unassigned) fund balances over 3 years less than a 25 percent decrease or did the current year's assigned and unassigned fund balances exceed 75 days of operational expenditures? (If the school district fails indicator 6, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	4/19/2024 6:26:34 PM	Ceiling Passed
7	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)? See ranges below in the Determination of Points section.	4/19/2024 6:26:34 PM	10
8	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt? See ranges below in the Determination of Points section.	4/19/2024 6:26:34 PM	10

9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days? See ranges below in the Determination of Points section.	4/19/2024 6:26:34 PM	10
10	This indicator is not being scored.		10
11	Was the ratio of long-term liabilities to total assets for the school district sufficient to support long-term solvency? If the school district's increase of students in membership over 5 years was 7 percent or more, then the school district automatically passes this indicator. See ranges below in the Determination of Points section.	4/19/2024 6:26:34 PM	6
12	What is the correlation between future debt requirements and the district's assessed property value?	8/8/2024 3:20:17 PM	10
13	Was the school district's administrative cost ratio equal to or less than the threshold ratio? See ranges below in the Determination of Points section.	6/22/2024 11:15:58 PM	8
14	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? If the student enrollment did not decrease, the school district will automatically pass this indicator.	4/19/2024 6:26:34 PM	10
15	This indicator is not being scored.		5
16	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function? (If the school district fails indicator 16, the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	4/19/2024 6:26:34 PM	Ceiling Passed
17	Did the external independent auditor report that the AFR was free of any instance(s) of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.) (If the school district fails indicator 17, the maximum points and highest rating that the school district may receive is 79 points, C = Meets Standard Achievement.)	4/19/2024 6:26:34 PM	Ceiling Passed
18	Did the external independent auditor indicate the AFR was free of any instance(s) of material noncompliance for	4/19/2024 6:26:34	10

	grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	PM	
19	Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end?	4/19/2024 6:26:34 PM	5
20	Did the school board members discuss the district's property values at a board meeting within 120 days before the district adopted its budget? (If the school district fails indicator 20 the maximum points and highest rating that the school district may receive is 89 points, B = Above Standard Achievement.)	4/19/2024 6:26:34 PM	Ceiling Passed
21	Did the school district receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?	4/19/2024 6:26:34 PM	Ceiling Passed
			94 Weighted Sum
			1 Multiplier Sum
			(100 Ceiling)
			94 Score

DETERMINATION OF RATING

A.	Did the school district fail any of the critical indicators 1, 2, 3, or 4? If so, the school district's rating is F for Substandard Achievement regardless of points earned.	
B.	Determine the rating by the applicable number of points.	
	A = Superior Achievement	90-100
	B = Above Standard Achievement	80-89

C = Meets Standard Achievement	70-79
F = Substandard Achievement	<70
<p>No Rating = A school district receiving territory that annexes with a school district ordered by the commissioner under TEC 13.054, or consolidation under Subchapter H, Chapter 41. No rating will be issued for the school district receiving territory until the third year after the annexation/consolidation.</p> <p>The school district receives an F if it scores below the minimum passing score, if it failed any critical indicator 1, 2, 3, or 4, if the AFR or the data were not both complete, or if either the AFR or the data were not submitted on time for FIRST analysis.</p>	

CEILING INDICATORS

Did the school district meet the criteria for any of the following **ceiling indicators** 4, 6, 16, 17, 20 or 21? If so, the school district's applicable maximum points and rating are disclosed below. Please note, an F = Substandard Achievement Rating supersedes any rating earned as the result of the school district meeting the criteria of a ceiling indicator.

Determination of rating based on meeting ceiling criteria.	Maximum Points	Maximum Rating
Indicator 4 (Timely Payments) - School district was issued a warrant hold.	95	A = Superior Achievement
Indicator 6 (Average Change in Fund Balance) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 16 (PEIMS to AFR) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 17 (Material Weaknesses) - Response to indicator is <i>No</i> .	79	C = Meets Standard Achievement
Indicator 20 (Property Values and Tax Discussion) - Response to indicator is <i>No</i> .	89	B = Above Standard Achievement
Indicator 21 (FSP Repayment Plan) - Response to indicator is <i>Yes</i> .	70	C = Meets Standard Achievement

**Lake Travis ISD’s Financial Management Performance under each Indicator
for the Current Years’ Rating**

Schools FIRST Rating Worksheet

	Indicator	How Ratings Are Assessed	LTISD Response	Score
1	Was the complete annual financial report (AFR) and data submitted to the TEA within 30 days of the January 27 deadline depending on the school district’s fiscal year end date of August 31, respectively?	A simple indicator. Was the Annual Financial Report filed by the deadline?	Lake Travis ISD’s Annual Financial Report was filed with the Texas Education Agency on January 8, 2024.	Yes
2	Was there an unmodified opinion in the AFR on the financial statements as a whole? (The American Institute of Certified Public Accountants (AICPA) defines unmodified opinion. The external independent auditor determines if there was an unmodified opinion.)	A “modified” version of the auditor’s opinion in your annual audit report means that you need to correct some of your reporting or financial controls. A district’s goal, therefore, is to receive an “unmodified opinion” on its Annual Financial Report. This is a simple “Yes” or “No” indicator.	Lake Travis ISD received a “clean audit” (unmodified opinion).	Yes

	Indicator	How Ratings Are Assessed	LTISD Response	Score
7	Was the number of days of cash on hand and current investments in the general fund for the school district sufficient to cover operating expenditures (excluding facilities acquisition and construction)?	This indicator measures how many days after the end of the fiscal year the school district could have disbursed funds for its operating expenditures without receiving any new revenues. Did Lake Travis ISD meet or exceed the target amount in School FIRST of greater than or equal to 90 days?	As of August 31, 2023, Lake Travis ISD had 104 days of cash on hand to pay its obligations.	10
8	Was the measure of current assets to current liabilities ratio for the school district sufficient to cover short-term debt?	This indicator measures whether the school district had sufficient short-term assets at the end of the fiscal year to pay off its short-term liabilities. Did Lake Travis ISD meet or exceed the target amount in School FIRST of greater than or equal to 3?	As of August 31, 2023, Lake Travis ISD had a current liabilities ratio of 10.3704.	10
9	Did the school district's general fund revenues equal or exceed expenditures (excluding facilities acquisition and construction)? If not, was the school district's number of days of cash on hand greater than or equal to 60 days?	This indicator measures the ability of the district to pay its obligations. To receive full credit for this indicator the district must have at least 60 days of cash on hand.	As of August 31, 2023, Lake Travis ISD had 104 days of cash on hand to pay its obligations.	10
10	Did the school district average less than a 10 percent variance (90% to 110%) when comparing budgeted revenues to actual revenues for the last 3 fiscal years?	This indicator measures how accurately the district forecast projected revenue by comparing budgeted revenue submitted through PEIMS in October of the fiscal year to actual revenue submitted after the close of the fiscal year. This indicator is currently not being scored due to the impact of COVID-19 and federal ESSER funding on school district revenue.	This indicator is not being scored.	10

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	Indicator	How Ratings Are Assessed	LTISD Response	Score
14	Did the school district not have a 15 percent decline in the students to staff ratio over 3 years (total enrollment to total staff)? (If the student enrollment did not decrease, the school district will automatically pass this indicator.)	If a decline in student enrollment is occurring, this indicator measures if the decline in total staff is in proportion to the declining enrollment over a 3-year period. If declining enrollment is occurring, the change in this ratio cannot exceed 15%.	Lake Travis ISD had an increase in student enrollment of 398 over the 3-year period.	10
15	Was the school district's ADA within the allotted range of the district's biennial pupil projection(s) submitted to TEA? If the district did not submit pupil projections to TEA, did it certify TEA's projections?	This indicator measures how well the district was able to project average daily attendance for the coming biennium for payment purposes. Projected ADA is compared to actual. This indicator is currently not being scored due to the impact of COVID-19 on school district attendance.	This indicator is not being scored.	5
16	Did the comparison of Public Education Information Management System (PEIMS) data to like information in the school district's AFR result in a total variance of less than 3 percent of all expenditures by function?	This indicator measures the quality of data reported to PEIMS and in your Annual Financial Report to make certain that the data reported in each case "matches up." If the difference in numbers reported in any fund type is 3 percent or more, your district "fails" this measure.	Lake Travis ISD had a zero percent variance between its' Annual Financial Report and the data submitted to PEIMS.	Ceiling Passed
17	Did the external independent auditor report that the AFR was free of any instances of material weaknesses in internal controls over financial reporting and compliance for local, state, or federal funds? (The AICPA defines material weakness.)	A clean audit of your Annual Financial Report would state that your district has no material weaknesses in internal controls. Any internal weaknesses create a risk of your district not being able to properly account for its use of public funds, and should be immediately addressed.	Lake Travis ISD had a clean audit report.	Ceiling Passed

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	Indicator	How Ratings Are Assessed	LTISD Response	Score
18	Did the external independent auditor indicate the AFR was free of any instances of material noncompliance for grants, contracts, and laws related to local, state, or federal funds? (The AICPA defines material noncompliance.)	This indicator measures whether the district is complying with laws, rules and regulations related to the expenditure of grant funds, contracts, and other state and federal funds.	Lake Travis ISD had no instances of material noncompliance reported in the audit.	10
19	Did the school district post the required financial information on its website in accordance with Government Code, Local Government Code, Texas Education Code, Texas Administrative Code and other statutes, laws and rules that were in effect at the school district's fiscal year end?	This indicator measures whether the district is complying with legal requirements related to financial transparency by posting all required information. Maximum points for this indicator is 5.	Lake Travis ISD had all required financial postings.	5 ³²
20	Did the school district's administration and school board members discuss any changes and/or impact to local, state, and federal funding at a board meeting within 120 days before the district adopted its budget?	This indicator measures whether the administration and the board had the opportunity to consider the impact of changes in local, state, and federal funding.	Lake Travis ISD administration and school board members discussed funding sources during a budget workshop.	Ceiling Passed
21	Did the school district receive an adjusted repayment schedule for more than one fiscal year for an overallocation of Foundation School Program (FSP) funds because of a financial hardship?	This indicator determines if the district has an adjusted repayment schedule for an overallocation of FSP funds.	Lake Travis ISD did not receive an adjusted repayment schedule.	Ceiling Passed

with the Board's Policies. It shall be the further duty of the Superintendent to direct, assign, reassign, and evaluate all the employees of the District consistent with Board policies and federal and state law. It shall be the further duty of the Superintendent to organize, reorganize, and arrange the staff of the District, and to develop and establish administrative regulations, rules, and procedures which the Superintendent deems necessary for the efficient and effective operation of the District consistent with the Board's lawful directives, the Board's policies, and state and federal law. It shall be the further duty of the Superintendent to accept all resignations of employees of the District consistent with the Board's policies, except the Superintendent's resignation, which must be accepted by the Board. The Superintendent shall perform the duties of the Superintendent of Schools for the District with reasonable care, diligence, skill and expertise. All duties assigned to the Superintendent by the Board shall be appropriate to and consistent with the professional role and responsibility of the Superintendent.

2.2 Professional Certification. The Superintendent shall at all times during the term of this Contract, and any renewal or extension thereof, hold and maintain a valid certificate required of a superintendent by the State of Texas and issued by the State Board for Educator Certification or the Texas Education Agency and all other certificates required by law.

2.3 Reassignment. The Superintendent may not be reassigned from the position of Superintendent to another position without the Superintendent's express written consent.

2.4 Board Meetings. Unless otherwise prohibited by law, the Superintendent shall attend, and shall be permitted to attend, all meetings of the Board, both public and closed, with the exception of those closed meetings devoted to the consideration of any action or lack of action on the Contract or the Superintendent's salary and benefits as set forth in this Contract, or the Superintendent's evaluation, or for purposes of resolving conflicts between individual Board members, or when the Board is acting in its capacity as a tribunal. In the event of illness or Board President approved absence, the Superintendent's designee may attend such meetings, subject to the exceptions noted above.

2.5 Criticisms, Complaints, and Suggestions. The Board, individually and collectively, shall refer all substantive criticisms, complaints, and suggestions called to the Board's attention to the Superintendent for study and appropriate action, and the Superintendent shall investigate such matters and inform the Board of the results of such action.

2.6 Indemnification. To the extent it may be permitted to do so by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the District does hereby agree to defend, hold harmless, and indemnify Superintendent from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against Superintendent in the Superintendent's individual or official capacity as an employee and as a Superintendent of the District, providing the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of Superintendent as an employee of the District, acting within the course and scope of Superintendent's employment with the District; excluding,

however, any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that Superintendent committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence, or acted in bad faith, with conscious indifference or reckless disregard; and excluding any costs, fees, expenses or damages that would be recoverable or payable under an insurance contract, held either by the District or by Superintendent. The selection of Superintendent's legal counsel shall be with the mutual agreement of Superintendent and by the District if such legal counsel is not also District's legal counsel. A legal defense may be provided through insurance coverage, in which case the Superintendent's right to agree to legal counsel provided for him will depend on the terms of the applicable insurance contract. To the extent this Section 2.6 exceeds the authority provided and the limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Section 2.6 shall survive the termination of this contract.

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III. Compensation

3.1 Salary. The District shall provide the Superintendent with an annual base salary in the sum of Three Hundred and Forty Four Thousand Seven-Hundred Sixty Dollars (\$344,760.00). The annual salary rate approved by the Board shall be paid to the Superintendent in equal installments consistent with the Board's policies.

3.2 Salary Adjustments. During the term of this Contract, or any renewal or extension thereof, the Superintendent shall, on September 1 of each school year, receive the same percentage increase in his then base salary as is received for that school year by full-time classroom teachers, unless the Superintendent notifies the Board President in writing that he has elected not to receive all or a portion of this increase. At any time during the term of this Contract, the Board may, in its discretion, review and adjust the salary of the Superintendent, but in no event shall the Superintendent be paid less than the amount in Section 3.1 of this Contract, except by mutual agreement of the two pursuant to a lawful Board resolution. In such event, an addendum shall be attached to this Contract incorporating the adjusted salary.

3.3 Civic Activities. The Superintendent is encouraged to participate in community and civic affairs. The reasonable and actual expense of such activities, subject to Board approval, shall be borne by the District from funds budgeted for that purpose by the Board.

3.4 Insurance. The District shall pay for the Superintendent the same premium contribution amount of coverage under the District's group health care plan that the District makes available to every employee.

3.5 Vacation, Holiday and Personal Leave. The Superintendent may take, at the Superintendent's choice, with prior notice to the Board President, the same number of days of vacation authorized by policies adopted by the Board for administrators on twelve-month contracts, the days to be taken in a single period or at different times. The vacation days taken by the Superintendent will be taken at such time as will least interfere with the performance of the Superintendent's duties set forth in this Contract. The Superintendent shall observe the same legal

holidays as provided by Board policies for administrative employees on twelve-month contracts. All accrued, but unused personal leave days and vacation days shall carry over from year to year. Upon termination of employment, all unused vacation and personal leave days accumulated, but unused, by the Superintendent during his employment by the District will be paid in lump sum to the Superintendent at the Superintendent's then current daily rate of pay calculated by dividing the Superintendent's salary as reported to TRS divided by two hundred and twenty-four (224) days of service per year (less applicable deductions, including withholding taxes). However, the Superintendent shall have the option to receive payment for up to ten, but must not less than a two-thirds of his currently accumulated, unused vacation and personal leave days annually at the end of each Contract year. The value of any accumulated, unused vacation and personal leave days remaining upon termination of this Contract shall be paid to the Superintendent or his survivors within 30 days of termination date of the Contract (less applicable deductions, including withholding taxes).

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3.6 Professional Growth. The Superintendent shall devote the Superintendent's time, attention, and energy to the direction, administration, and supervision of the District. The Board, however, encourages the continued professional growth of the Superintendent through the Superintendent's active attendance at and participation in appropriate professional meetings at the local, regional, state and national levels. The Board shall encourage the use of data and information sources, and shall encourage the participation of the Superintendent in pertinent education seminars and courses offered by public or private institutions or by educational associations, as well as the participation in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Superintendent to perform the Superintendent's professional responsibilities for the District. In its encouragement of the Superintendent to grow professionally, the Board shall permit a reasonable amount of release time for the Superintendent as the Superintendent and the Board deem appropriate, to attend such seminars, courses or meetings. The District does hereby agree to provide in the District's budget during the term of this Contract for the benefit of the Superintendent, a professional development budget per Contract year to be used for registration, travel, meals, lodging, and other related expenses. The District shall pay the Superintendent's membership dues to the Texas Association of School Administrators, as well as other memberships necessary to maintain and improve the Superintendent's professional skills. The District shall bear the reasonable cost and expense for such attendance and membership.

3.7 Educational Development. The Board supports this educational development by the Superintendent and believes that the attainment of a doctorate degree will enhance his professional knowledge and leadership of the District. Upon enrollment and working toward a doctorate degree, the Superintendent shall be entitled to an additional ten (10) educational development leave days per year for this purpose. These leave days shall be accounted for separately from the Superintendent's other leave, they may not be accumulated from year to year, and they may not be exchanged for compensation at any time. These educational development leave days shall be used by the Superintendent solely for his work toward a doctorate degree and shall be taken at times that do not interfere with the performance of his duties as Superintendent. The Superintendent shall periodically report to the Board his progress toward a doctorate degree.

3.8 Business Expenses. The District shall pay for or reimburse the Superintendent for reimbursable expenses incurred by the Superintendent in the continuing performance of the Superintendent's duties under this Contract from funds budgeted for that purpose by the Board. The District also agrees to pay the actual and incidental costs incurred by the Superintendent for travel outside of the Lake Travis Independent School District attendance zone; such costs may include, but are not limited to, airline tickets, hotels and accommodations, meals, mileage, rental car and other expenses incurred in the performance of the business of the District. The Superintendent shall comply with all policies, procedures and documentation requirements in accordance with the Board policies and established procedures. Annually, the Superintendent's business expenses will be subject to review by the District's independent auditors. In addition, the Superintendent shall submit a quarterly report on his business expenses to the Board.

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3.9 Teacher Retirement System of Texas. The District shall supplement the Superintendent's annual salary by an amount equal to one-hundred percent (100%) of the Superintendent's portion of the monthly member contribution to the Texas Teacher Retirement System ("TRS") for the term of this Contract, with any extensions made by the Board for performance of Superintendent duties. This supplement shall include both the retirement and TRS-Care parts of the TRS member contribution, as applicable. This additional salary supplement shall be paid to the Superintendent in regular monthly payroll installments and shall be reported as "creditable compensation" by the District for purposes of TRS, to the extent permitted by TRS.

3.10 Supplemental Retirement Plan. For each payroll period during the Term of this Contract beginning January 1, 2023, including any extensions thereof, the District shall add to the Salary of the Superintendent the amount necessary to contribute the maximum combined voluntary contribution amount allowable under Section 402(g) of the Code for a 403(b) and a 457(b) Plan, at the beginning of the Contract year, as indexed, including the age 50 catch-up, if applicable. One-twelfth of this amount shall be paid as a monthly salary deferral contribution, at the election of the Superintendent, to a plan established by the District under Section 403(b) and/or Section 457(b) of the Code. ("Additional Salary"). In the event the Superintendent executes a salary deferral agreement in accordance with the requirements of Sections 403(b) and/or 457(b) of the Internal Revenue Code (the "Code") in at least the amount of the Additional Salary, the Additional Salary shall be paid as a salary deferral contribution ("Salary Deferral Contribution"). Under and pursuant to applicable Internal Revenue Service rules the Superintendent shall have the option to elect to receive the Additional Salary in cash rather than as a Salary Deferral Contribution. All such Salary Deferral Contributions contemplated herein shall be paid to a plan established by the District under Section 403(b) and/or Section 457(b) of the Code. Such plans shall include investments as allowed under Sections 403(b), 403(b)(7) and/or 457(b) of the Code, respectively, and the investments for the Superintendent's accounts shall be solely at his discretion. The Superintendent shall always be 100% vested in his account under the 403(b) and/or 457(b) plan. The Salary Deferral Contributions contemplated herein shall be treated as salary deferrals under the Code and shall be reported as "creditable compensation" by the District for purposes of the Teacher Retirement System of Texas. No payments under this Section shall be made after the Superintendent's employment terminates.

3.11 Longevity Pay. In order to encourage continuity of leadership in the District, the

District wishes to provide additional compensation to the Superintendent as a reward for reaching certain longevity goals. This longevity payment shall be made as follows:

- (a) For each contract year of service with the District, the District shall supplement the Superintendent's monthly salary by 5% of the Superintendent's annual salary and shall be paid to the Superintendent by regular payroll installments for twelve months beginning on January 1, 2024 and shall be reported as creditable compensation to TRS.

3.12 Information Technology/Communications. The District shall provide the Superintendent with a personal cellular telephone and/or personal digital assistant (PDA) with nationwide coverage, a laptop and a printer, and a wireless router, which he may use for his business and personal purposes, provided that any personal use of such equipment shall not interfere with its business use, and further provided that the Superintendent shall not use such equipment for any personal purposes that are inconsistent with or prohibited by District policies, regulations or Board directives, or by state or federal law, for use of property owned by the District.

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3.13 Supplemental Retirement Plan. For each year during the term of this Contract, the District shall contribute to a Supplemental Retirement Plan for the benefit of the Superintendent in an amount equal to five percent (5%) of the contribution limit for contributions to a 403(b) plan, minus the amount allowable as an employee deferral, and a 401(a) plan under Section 415(c) of the Internal Revenue Code (the "Code"), as indexed each year. The District shall contribute to the Supplemental Retirement Plan on or before December 31st of each year during the term of this Contract, beginning December 31, 2024.

The contributions to the Supplemental Retirement Plan and earnings thereon shall become vested according to the schedule listed below.

Date	Vested Percentage
Prior to December 31, 2027	0%
December 31, 2027	100%

If the contract is terminated without cause prior to December 31st of each year in which the contribution under this section has not been made, the District shall make the contribution on or before the date of termination and the Superintendent shall become immediately vested in 100% of the account value. The Supplemental Retirement Plan shall be a plan established under Section 403(b) of the Internal Revenue Code (the "Code"). The 403(b) plan shall be established as employer-paid with non-discretionary contributions by the District and the Superintendent shall have no right to receive such contributions in cash. The 403(b) plan shall each be established under a written plan document that meets the requirements of the Code and such document is incorporated herein by reference. The funds for the 403(b) plan shall each be invested as determined solely by the Superintendent in such investment vehicles as are allowable under the Code for the applicable type of plan.

3.14 Performance Pay. The District will provide an incentive and performance payment to the Superintendent, payable to a supplemental retirement plan (SRP), of up to \$5,000 for each year of employment under this Contract. The amount of this payment will be paid on the basis of meeting objectives established by the Board and Superintendent no later than November 1 of each year and shall be reviewed annually by the Board and Superintendent. The established goal(s) shall be reduced to writing, be measurable and be able to be directly impacted by the Superintendent. The contribution to the plan shall be made no later than sixty (60) days following the final report on the established performance goals. Each contribution to the SRP and earnings thereon shall at all times be vested with

the Superintendent. The Supplemental Retirement Plan shall be a plan established under Section 403(b) of the Internal Revenue Code (the "Code"). The 403(b) plan shall be established as employer-paid with non-elective contributions by the District and the Superintendent shall have no right to receive such contributions in cash. The 403(b) plan shall each be established under a written plan document that meets the requirements of the Code and such document is incorporated herein by reference. The funds for the 403(b) plan shall each be invested as determined solely by the Superintendent in such investment vehicles as are allowable under the Code for the applicable type of plan.

3.15 Primary Residence. The Superintendent shall maintain his primary residence within the geographical boundaries of the District during the term of this Contract, and any extension or renewal thereof.

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3.16 Annual Physical Examination. The Superintendent shall undergo an annual physical examination by the Superintendent's primary care physician, or other physician mutually acceptable to the Superintendent and the Board President. The physician shall submit a confidential statement to the Board President verifying the Superintendent's fitness to perform the essential functions of his job, and copies of all such statements shall be confidential to the extent permitted by law. The District shall pay all actual and reasonable costs of the annual physical examination. The examination shall be performed on or before November 1st of each year of this Contract, and any extension or renewal thereof.

IV. Annual Performance Goals

4. 1 Development of Goals. The Superintendent shall submit to the Board each year, for the Board's consideration and adoption, a preliminary list of goals for the District. The goals approved by the Board shall at all times be reduced to writing and shall be among the criteria on which the Superintendent's performance will be reviewed and evaluated.

V. Review of Performance

5.1 Time and Basis of Evaluation. The Board shall evaluate and assess in writing the performance of the Superintendent at least once each year during the term of this Contract. The evaluation and assessment shall be reasonably related to the duties of the Superintendent as outlined in the Superintendent's job description and the goals adopted by the Board.

5.2 Confidentiality. Unless the Board and Superintendent expressly agree otherwise in writing, the evaluation of the Superintendent shall at all times be conducted in closed session and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Board or Superintendent from sharing the content of the Superintendent's evaluation with their respective legal counsel.

5.3 Evaluation Format and Procedures. The evaluation format and procedure shall be in accordance with the evaluation instrument selected by the Board in accordance with the provisions of Article V of this Contract, the Board's policies, and state and federal law. In the event the Board deems that the evaluation instrument, format and/or procedure is to be modified by the Board and such modifications would require new or different performance expectations, the Superintendent shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

VI. Extension or Nonrenewal of Employment Contract

6.1 Extension/Nonrenewal. Extension or nonrenewal shall be in accordance with Board policy, Texas Education Code Chapter 21, Subchapter E, and applicable law. Notwithstanding anything to the contrary in Section 21.212(a) of the Texas Education Code, the Superintendent shall be entitled to written notice not later than the 45th day before the last day of the Contract term, containing reasonable notice of the reason(s) for the proposed non-renewal of the Superintendent's Contract with the District.

VII. Termination of Employment Contract

7.1 Mutual Agreement. This Contract may be terminated by the mutual agreement of the Superintendent and the Board in writing, upon such terms and conditions as may be mutually agreed upon. Retirement or Death. This Contract shall be terminated upon the retirement or death of the Superintendent.

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7.2 Dismissal for Good Cause. The Board may dismiss the Superintendent during the term of the Contract for good cause. The term "good cause" is defined as follows:

- a. Failure to fulfill duties or responsibilities as set forth under the terms and conditions of this Contract;
- b. Incompetence or inefficiency in the performance of required or assigned duties as documented by evaluations, supplemental memoranda, or other written communication from the Board; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Board has provided the Superintendent a reasonable opportunity to remediate any incompetency or inefficiency.
- c. Insubordination or failure to comply with lawful written Board directives;
- d. Willful failure to comply with written Board Policies or District administrative directives;
- e. Neglect of duties;
- f. Drunkenness or excessive use of alcoholic beverages;
- g. Illegal use of drugs, hallucinogens, or other substances regulated by the Texas Controlled Substances Act;
- h. Conviction of a felony or crime involving moral turpitude;
- i. Failure to meet the District's standards of professional conduct;
- j. Failure to comply with reasonable District professional development requirements regarding advanced course work or professional development
- k. Disability, not otherwise protected by law, that substantially impairs the Superintendent's performance of required duties;
- l. Immorality, which is conduct not in conformity with the accepted moral standards of the community encompassed by the District. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption, indecency or depravity;
- m. Assault on an employee or student;
- n. Knowingly falsifying records or documents related to the District's activities;
- o. Conscious misrepresentation of material facts to the Board or other District officials in the conduct of the District's business;
- p. Failure to fulfill requirements for the Superintendent certification;
- q. Failure to fulfill the requirements of a deficiency plan; or,
- r. Any other reason constituting "good cause" under Texas law.

7.3 Termination Procedure. In the event the Board proposes the termination of this Contract for "good cause," the Superintendent shall be afforded all the rights as set forth in the Board's policies, and state and federal law.

7.4 Resignation of Superintendent. The Superintendent may leave the employment of the District at the end of a school year without penalty by filing a written resignation with the Board. The resignation must be addressed to the Board and filed not later than the 45th day before the first day of instruction of the following school year. The Superintendent may resign, with the consent of the Board, at any other time.

Article VIII. Miscellaneous

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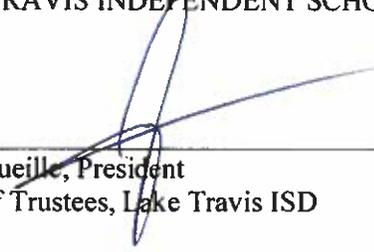
8.1 Controlling Law. This Contract shall be governed by the laws of the State of Texas and shall be performable in Travis County, Texas, unless otherwise provided by law.

8.2 Complete Agreement. This Contract embodies the entire agreement between the parties hereto and cannot be varied except by written agreement of the undersigned parties, except as expressly provided herein.

8.3 Conflicts. In the event of any conflict between the terms, conditions and provisions of this Employment Contract and the provisions of the Board's policies, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Contract shall take precedence over the contrary provisions of the Board's policies or any such permissive law during the term of the Contract.

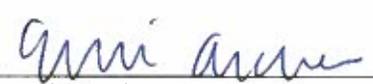
8.4 Savings Clause. In the event any one or more of the provisions contained in this Contract shall, for any reason, be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. All existing agreements and contracts, both verbal and written, between the parties hereto regarding the employment of the Superintendent have been superseded by this Contract, and this Contract constitutes the entire agreement between the parties unless amended pursuant to the terms of this Contract.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

By: 
John Aouelle, President
Board of Trustees, Lake Travis ISD

Attest:

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By: 
Erin Archer, Secretary
Board of Trustees, Lake Travis ISD

Executed this 21 day of February, 2024

Superintendent
By: 
Paul Norton

Executed this 21 day of February, 2024

Reimbursements Received by the Superintendent and Board Members for Fiscal Year 2023

For the Twelve-month Period Ended August 31, 2023										
Description of Reimbursements	Superintendent Paul Norton	Place 1 Phillip Davis	Place 2 Lauren White	Place 3 Erin Archer	Place 4 John Aouelle	Place 5 Kim Flasch	Place 6 William Beard	Place 7 Bob Dorsett, Jr.	Place 6 Rob Aird (May 2023)	Place 7 Keely Cano (May 2023)
Meals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	36.94	\$ 43
Lodging	706.98	224.82	449.64	224.82	224.82	224.82	-	-	248.25	674.46
Transportation	3,024.83	-	-	-	-	59.54	-	-	231.66	194.80
Other	1,955.00	485.00	1,020.00	485.00	485.00	485.00	-	-	485.00	1,000.00
Total	\$ 5,686.81	\$ 709.82	\$ 1,469.64	\$ 709.82	\$ 709.82	\$ 769.36	\$ -	\$ -	\$ 1,001.85	\$ 1,869.29

Outside Compensation and/or Fees Received by the Superintendent for Professional Consulting and/or Other Personal Services in Fiscal Year 2023

For the Twelve-Month Period Ended August 31, 2023

Name(s) of Entity(ies)	
-	\$ 0.00
Total	\$ 0.00

Gifts Received by Board Members and Executive Officers (and First Degree Relatives, if any) in Fiscal Year 2023
(gifts that had an economic value of \$250 or more in the aggregate in the fiscal year)
For the Twelve-Month Period Ended August 31, 2023

Place 1 Phillip Davis	Place 2 Lauren White	Place 3 Erin Archer	Place 4 John Aouelle	Place 5 Kim Flasch	Place 6 William Beard	Place 7 Bob Dorsett, Jr.	Place 6 Rob Aird (May 2023)	Place 7 Keely Cano (May 2023)
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Superintendent Paul Norton	Asst. Supt. Pam Sanchez	Asst. Supt. Evalene Murphy	Asst. Supt. Stefani Vickery	Asst. Supt. Brad Bailey	Asst. Supt. Tasha Barker (July 2023)			
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00			

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Business Transactions Between School District and Board Members for Fiscal Year 2023
For the Twelve-Month Period Ended August 31, 2023

Superintendent Paul Norton	Place 1 Phillip Davis	Place 2 Lauren White	Place 3 Erin Archer	Place 4 John Aouelle	Place 5 Kim Flasch	Place 6 William Beard	Place 7 Bob Dorsett, Jr.	Place 6 Rob Aird (May 2023)	Place 7 Keely Cano (May 2023)
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00



Glossary

Annual Financial Report (AFR): The audited annual report required by TEC section 44.008, that is due to TEA by no later than 150 days after the close of a school district's or an open-enrollment charter school's fiscal year.

Ceiling indicator: An upper limit (the maximum score) at which a score from a standard limit of a specific indicator will result regardless of overall points.

Debt: An amount of money owed to a person, bank, company, or other organization.

Electronic submission: The TEA electronic data feed format required for use by school districts, open-enrollment charter schools, and regional education service centers (ESCs).

Financial Integrity Rating System of Texas (FIRST): The financial accountability rating system administered by the TEA in accordance with the TEC sections 39.082 and 39.085. The system provides additional transparency to public education finance and meaningful financial oversight and improvement for school districts (School FIRST) and open-enrollment charter schools and charter schools operated by a public institution of higher education under TEC, Chapter 12, Subchapters D and E (Charter FIRST).

Fiscal Year: The fiscal year of a school district or an open-enrollment charter school, which begins on July 1 or September 1 of each year, as determined by the board of trustees of the district or the governing body of the

charter holder in accordance with the TEC, §44.0011.

Foundation School Program (FSP): The program established under the TEC, Chapters 46, 48, and 49 or any successor program of state-appropriated funding for school districts in this state.

Summary of Finances (SOF) report: The document of record for FSP allocations. An SOF report is produced for each school district and open-enrollment charter school by the TEA division responsible for state funding that describes the school district's or open-enrollment charter school's funding elements and FSP state aid.

Texas Student Data System Public Education Information Management System (TSDS PEIMS): The system that school districts and open-enrollment charter schools use to load, validate, and submit their data to the TEA.

Warrant hold: The process by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the Texas Comptroller of Public Accounts until the debt is satisfied in accordance with the Texas Government Code section 403.055



AGENDA ITEM ACTION SHEET

AGENDA ITEM

September 2024 Monthly Financial Reports-Statement of Revenues and Expenditures, Balance Sheet, Tax Statement and 2018/2023/2024 Capital Projects Reports

RECOMMENDED ACTION

For Information only.

RATIONALE

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

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Brad Goerke – Director of Finance

ATTACHMENTS

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

MEETING DATE

October 16, 2024

Lake Travis ISD
STATEMENT OF REVENUE AND EXPENDITURES
GENERAL FUND

9/30/2024

Current Year

Prior Year

<i>Revenues</i>		Current Year				Prior Year	
		Budget	Actual	Balance	Percent of Budget	Cumulative Actual	Percent of Actual
5711	Current Year Tax Revenue	\$ 140,500,000	\$ -	\$ 140,500,000	0.00%	\$ 83,277	0.06%
5700	Other Local Revenues	7,650,000	253,788	7,396,212	3.32%	438,789	8.52%
5800	State Program Revenue	14,126,764	1,649,241	12,477,523	11.67%	1,216,798	8.64%
5900	Federal Revenue	158,500	230	158,270	0.15%	-	0.00%
Total Revenue		\$ 162,435,264	\$ 1,903,259	\$ 160,532,005	1.17%	\$ 1,738,864	1.12%

Expenditures

11	Instruction	\$ 67,261,000	\$ 6,412,121	\$ 60,848,879	9.53%	\$ 6,370,217	9.39%
12	Instructional Resources	1,071,983	101,055	970,928	9.43%	98,339	9.50%
13	Staff Development	1,400,016	115,975	1,284,041	8.28%	116,675	10.77%
21	Instructional Administration	2,361,963	234,139	2,127,824	9.91%	227,716	8.96%
23	School Administration	5,828,584	527,265	5,301,319	9.05%	532,387	9.20%
31	Guidance & Counseling	5,784,061	447,883	5,336,178	7.74%	443,520	8.20%
32	Social Work Services	475,689	49,866	425,824	10.48%	28,204	9.13%
33	Health Services	1,087,609	100,797	986,812	9.27%	99,217	10.58%
34	Transportation	4,846,547	675,428	4,171,119	13.94%	613,139	10.92%
35	Food Service	122,601	10,217	112,384	8.33%	10,217	4.20%
36	Co-Curricular Account	2,745,259	224,643	2,520,616	8.18%	203,708	7.52%
41	General Administration	4,325,194	398,609	3,926,585	9.22%	408,759	8.64%
51	Plant & Maint. Operation	12,678,467	2,023,895	10,654,572	15.96%	2,022,708	16.06%
52	Security	1,696,927	142,811	1,554,116	8.42%	124,163	7.58%
53	Non-Inst. Data Processing	3,136,783	411,186	2,725,597	13.11%	443,787	13.84%
61	Community Services	528,009	37,250	490,759	7.05%	52,797	10.97%
71	Debt Service	275,000	-	275,000	0.00%	-	0.00%
81	Facilities/Construction	40,867	3,406	37,461	8.33%	-	0.00%
91	State Transfers	49,786,945	-	49,786,945	0.00%	-	0.00%
92	Incremental Cost WADA	-	-	-	0.00%	-	0.00%
93	SPED TRF-Regular Day	66,760	-	66,760	0.00%	-	0.00%
95	JJAEP Transfer Payments	15,000	-	15,000	0.00%	-	0.00%
99	Travis County Appraisal	1,050,000	255,139	794,861	24.30%	240,123	23.88%
Total Expenditures		\$ 166,585,264	\$ 12,171,685	\$ 154,413,579	7.31%	\$ 12,035,674	7.40%

Other Resources and (Uses)

7990	Other Resources	150,000	-	150,000		2,289,000	100.00%
8990	Other Uses	-	-	-		-	
8911	Transfers-Out	-	-	-		-	
Total Resources & Uses		\$ 150,000	\$ -	\$ 150,000		\$ 2,289,000	100.00%

Fund Balance

1200	Excess (Deficiency) Of Revenues Over Expenditures	\$ (4,000,000)	\$ (10,268,425)	
3000	Beginning Fund Balance 9/1	\$ 41,139,501		
3000	Ending Fund Balance 8/31	\$ 37,139,501		
3590	Committed Fund Balance	\$ 666,607		
3600	Unassigned Fund Balance	\$ 36,472,894		

Lake Travis ISD
COMBINED INTERIM BALANCE SHEET - ALL FUND TYPES
AS OF: September 30, 2024

<i>Assets</i>	General Fund	Special Revenue Funds	Debt Service Fund	Capital Projects Fund	Internal Svc., Trust & Agency Funds	Total Funds
Current Assets:						
1101 Cash	\$ 4,392,890	\$ 3,705,015	\$ 4,824,767	\$ 2,597,420	\$ 5,402,093	\$ 20,922,185
1103 Temporary Investments	33,235,366	-	5,946,395	297,398,025	205,663	336,785,449
Total Cash and Investments	\$ 37,628,255	\$ 3,705,015	\$ 10,771,162	\$ 299,995,445	\$ 5,607,756	\$ 357,707,634
Receivables:						
1210 Property Taxes-Current	\$ 1,452,290	\$ -	\$ 637,055	\$ -	\$ -	\$ 2,089,345
1220 Property Taxes-Delinquent	3,755,840	-	1,647,519	-	-	5,403,358
1230 Allowance-Uncollected Taxes	(1,072,058)	-	(392,241)	-	-	(1,464,299)
1240 Due From Federal Agencies	-	613,022	-	-	-	613,022
1250 Sundry Receivables	13,115	2,571	-	-	-	15,686
1260 Due From Funds	2,630,002	-	-	-	-	2,630,002
1280 Due From Other Funds Warehouse Items	-	-	-	-	(2,884)	(2,884)
1290 Other Receivables	738,547	-	-	-	-	738,547
1300 Inventories, At Cost	49,356	152,699	-	-	-	202,056
Total Receivables	\$ 7,567,092	\$ 768,292	\$ 1,892,333	\$ -	\$ (2,884)	\$ 10,224,832
1400 Other Current Assets	-	-	-	-	444,059.44	444,059.44
Total Assets	\$ 45,195,347	\$ 4,473,308	\$ 12,663,494	\$ 299,995,445	\$ 6,048,931	\$ 368,376,526
Resources						
5010 Estimated Revenue	\$ 162,585,264	\$ 11,435,383	\$ 67,200,000	\$ 444,494,997	\$ 17,713,620	\$ 703,429,264
5030 Less: Realized Revenue	1,903,259	839,702	11,774	1,248,951	631,417	4,635,103
5000 Revenues to be Received	160,682,005	10,595,681	67,188,226	443,246,046	17,082,204	698,794,161
Total Assets & Resources	\$ 205,877,352	\$ 15,068,988	\$ 79,851,720	\$ 743,241,491	\$ 23,131,135	\$ 1,067,170,687
Liabilities						
Current Liabilities:						
2110 Accounts Payable	\$ 183,473	\$ 20,573	\$ -	\$ 1,518	\$ 1,580,730	\$ 1,786,294
2160 Accrued Wages Payable	8,957,180	459,092	-	73,162	162,737	9,652,171
2170 Due To Other Funds	218,927	1,709,858	-	84,510	614,540	2,627,835
2180 Due To Other Govt's	112,490	-	48,904	-	-	161,394
2190 Due To Student Groups	-	-	-	-	-	-
2150 Payroll Deduct & Withhold	-	-	-	-	101,823	101,823
Total Current Payables	\$ 9,472,070	\$ 2,189,523	\$ 48,904	\$ 159,189	\$ 2,459,830	\$ 14,329,517
2210 Accrued Expenses	-	-	-	329,863	746,786	1,076,649
2300 Deferred Revenue	-	405,368	-	-	-	405,368
2400 Payable From Restricted Assets	-	-	-	-	-	-
2600 Deferred Inflows	4,852,202	-	1,884,182	-	-	6,736,383
Total Liabilities	\$ 14,324,272	\$ 2,594,890	\$ 1,933,086	\$ 489,053	\$ 3,206,616	\$ 22,547,917
Fund Equity						
6010 Appropriations	\$ 166,585,264	\$ 11,435,383	\$ 65,730,000	\$ 728,111,179	\$ 17,712,791	\$ 989,574,617
6050 Less: Expenditures	(12,171,685)	(871,282)	-	(1,173,049)	(1,100,835)	(15,316,851)
6030 Encumbrances	-	-	-	-	-	-
Available Appropriations	\$ 154,413,579	\$ 10,564,101	\$ 65,730,000	\$ 726,938,130	\$ 16,611,956	\$ 974,257,766
4310 Reserve For Encumbrances	-	-	-	-	-	-
3600 Unassigned Fund Balance	36,472,894	1,909,998	12,188,635	15,814,308	3,312,562	69,698,397
3590 Committed Fund Balance - Accr. Leave	666,607	-	-	-	-	666,607
Total Liability & Fund Equity	\$ 205,877,352	\$ 15,068,989	\$ 79,851,720	\$ 743,241,491	\$ 23,131,135	\$ 1,067,170,687

SUMMARY OF TAX COLLECTIONS
AS OF SEPTEMBER 2024

2024-25 Original Tax Levy	\$ 206,399,186.00
Delinquent Taxes as of 8/31/2024	<u>5,729,201.17</u>
 Total Receivables for 2024-25	 \$ 212,128,387.17
Current Year Adjustments	0.00
Prior Year Adjustments	<u>(505,174.30)</u>
 Adjusted Receivables.....	 \$ 211,623,212.87
Total Net Collections To Date	<u>121,247.13</u>
 Outstanding Receivables as of 9/30/2024	 \$ <u>211,744,460.00</u>

<u>SUMMARY OF BUDGETED COLLECTIONS</u>	<u>BUDGETED</u>	<u>NET COLLECTED</u>	<u>BUDGETED DIFFERENCE</u>	<u>% OF BUDGET COLLECTED</u>
Maintenance - Current Tax	\$ 140,500,000.00	\$ 0.00	\$ 140,500,000.00	0.00%
Maintenance - Prior Year Tax	200,000.00	(124,652.25)	324,652.25	0.00%
Maintenance - Penalties & Interest	<u>850,000.00</u>	<u>40,374.15</u>	<u>809,625.85</u>	<u>4.75%</u>
Sub-total	<u>\$ 141,550,000.00</u>	<u>\$ (84,278.10)</u>	<u>\$ 141,634,278.10</u>	<u>-0.06%</u>
 Debt Service - Current Tax	 \$ 63,000,000.00	 \$ 0.00	 \$ 63,000,000.00	 0.00%
Debt Service - Prior Year Tax	0.00	(54,679.36)	54,679.36	0.00%
Debt Service - Penalties & Interest	<u>300,000.00</u>	<u>17,710.33</u>	<u>282,289.67</u>	<u>5.90%</u>
Sub-total	<u>\$ 63,300,000.00</u>	<u>\$ (36,969.03)</u>	<u>\$ 63,336,969.03</u>	<u>-0.06%</u>
Total Collections	<u>\$ 204,850,000.00</u>	<u>\$ (121,247.13)</u>	<u>\$ 204,971,247.13</u>	<u>-0.06%</u>

<u>Tax Collection Comparison with 2024-25: Adjusted Tax Roll</u>	<u>2024-25</u>	<u>2023-24</u>	<u>2022-23</u>
Percent of Current Year Taxes Collected	0.00%	0.00%	0.00%
Percent of Total Taxes Collected	-0.09%	0.05%	0.06%
Percent of Total Taxes and P & I Collected	-0.06%	0.08%	0.09%

<u>Tax Collection Comparison with 2024-25: Original Tax Roll</u>	<u>2024-25</u>	<u>2023-24</u>	<u>2022-23</u>
Percent of Current Year Taxes Collected	0.00%	0.00%	0.00%
Percent of Total Taxes Collected	-0.09%	0.05%	0.06%
Percent of Total Taxes and P & I Collected	-0.06%	0.08%	0.09%

**Lake Travis ISD
2018 Bond Program Summary
September 30, 2024**

Resources	Original Budget	Amended Budget	Total Resources	Balance
1 Bond Proceeds	253,000,000.00	236,305,111.00	236,305,111.42	(0.42)
2 Interest Revenue	0.00	5,377,663.00	5,380,734.64	(3,071.64)
3 Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4 Bond Premiums	0.00	18,631,178.00	18,631,178.35	(0.35)
Total Resources	253,000,000.00	260,313,952.00	260,317,024.41	(3,072.41)

Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10 Elementary School #7	31,511,000.00	34,596,166.00	34,596,165.46	0.54
20 Elementary School #8	3,979,000.00	7,581,660.00	7,581,657.58	2.42
30 Secondary School #2	13,802,000.00	7,212,221.00	7,212,219.01	1.99
40 Middle School #3	75,980,710.00	77,314,012.00	77,314,011.66	0.34
50 FCA Projects	36,610,132.00	59,791,478.00	59,098,448.99	693,029.01
60/70 Small Renovation Improvements	16,927,133.00	11,828,950.00	11,828,947.58	2.42
Construction/Renovation	178,809,975.00	198,324,487.00	197,631,450.28	693,036.72
81 Instructional Materials & Equipment	5,707,000.00	4,169,372.00	4,169,371.01	0.99
82 Technology	29,901,700.00	25,608,118.00	25,608,117.83	0.17
83 Copy Machines	750,000.00	1,093,944.00	1,093,943.97	0.03
84 Maintenance	600,000.00	793,831.00	793,830.93	0.07
85 Food & Nutrition Services	3,950,789.00	1,948,974.00	1,948,973.36	0.64
86 Transportation	13,300,000.00	8,858,228.23	8,580,575.38	277,652.85
87 District Furniture & Equipment	6,000,000.00	6,959,895.00	6,959,894.41	0.59
88 Police	0.00	590,596.00	590,595.95	0.05
90 Land	1,270,000.00	576,465.00	576,464.50	0.50
91 Bond Closing	2,000,000.00	1,918,024.00	1,918,023.77	0.23
94 Contingency	7,510,536.00	5,058,925.77	5,058,925.00	0.77
95 Program Administration	3,200,000.00	3,950,514.00	3,950,512.66	1.34
97 LTMS Wastewater Expansion	0.00	462,578.00	369,012.18	93,565.82
Other Programs	74,190,025.00	61,989,465.00	61,618,240.95	371,224.05
Total 2018 Bond Program	253,000,000.00	260,313,952.00	259,249,691.23	1,064,260.77

**Lake Travis ISD
2023 Bond Program
September 30, 2024**

Resources	Original Budget	Amended Budget	Total Resources	Balance
1 Bond Proceeds -Prop A	548,410,330.00	548,410,330.00	246,715,051.13	301,695,278.87
1 Bond Proceeds -Prop B	60,790,110.00	60,790,110.00	40,639,386.23	20,150,723.77
2 Interest Revenue - Prop A	0.00	15,234,365.00	20,108,539.59	(4,874,174.59)
2 Interest Revenue - Prop B	0.00	2,480,013.00	3,273,483.18	(793,470.18)
3 Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4 Bond Premiums	0.00	14,705,427.00	14,705,427.00	0.00
Total Resources	609,200,440.00	641,620,245.00	325,441,887.13	316,178,357.87

Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10 Elementary School #8	50,917,526.00	50,917,526.00	172,706.74	50,744,819.26
20 Elementary School #9	55,517,521.00	55,517,521.00	3,515,629.67	52,001,891.33
30 Secondary School #2	179,990,620.00	179,990,621.00	5,166,348.10	174,824,272.90
40 Campus/District Facilities Projects	177,393,335.00	173,718,436.00	8,460,220.05	165,258,215.95
50 FCA Projects	36,312,528.00	36,260,427.00	3,765,276.34	32,495,150.66
60 Technology Improvements	60,790,110.00	60,790,110.00	21,837,401.85	38,952,708.15
Construction/Renovation	560,921,640.00	557,194,641.00	42,917,582.75	514,277,058.25
81 Curriculum and Instructional Material:	1,800,000.00	5,452,003.00	1,095,073.58	4,356,929.42
82 Copy Machines	585,300.00	585,300.00	0.00	585,300.00
83 Maintenance	273,500.00	298,500.00	249,746.90	48,753.10
84 Transortation	9,620,000.00	9,620,000.00	507,255.57	9,112,744.43
85 District Furniture & Equipment	1,500,000.00	1,550,000.00	152,194.06	1,397,805.94
90 Land	15,000,000.00	15,100,001.00	15,090,166.38	9,834.62
91 Bond Closing	4,000,000.00	4,000,000.00	2,059,864.36	1,940,135.64
94 Contingency	12,000,000.00	44,024,800.00	0.00	44,024,800.00
95 Program Management	3,500,000.00	3,500,000.00	117,343.42	3,382,656.58
98 Miscellaneous	0.00	295,000.00	232,570.23	62,429.77
Other Programs	48,278,800.00	84,425,604.00	19,504,214.50	64,921,389.50
Total 2023 Bond Program	609,200,440.00	641,620,245.00	62,421,797.25	579,198,447.75

**Lake Travis ISD
2024 Bond Program - Athletics
September 30, 2024**

Resources	Original Budget	Amended Budget	Total Resources	Balance
1 Bond Proceeds -Athletics	143,093,994.00	143,093,994.00	33,440,000.00	109,653,994.00
2 Interest Revenue	0.00	3,000,000.00	1,074,973.92	1,925,026.08
3 Interest Subject to Arbitrage Rebate	0.00	0.00	0.00	0.00
4 Bond Premiums	0.00	1,855,303.00	1,855,303.30	(0.30)
Total Resources	143,093,994.00	147,949,297.00	36,370,277.22	111,579,019.78

Appropriations	Original Budget	Amended Budget	Total Expended	Balance to Complete
10 Lake Travis High School	35,638,190.00	35,638,190.00	50,736.89	35,587,453.11
20 High School No. 2	102,748,000.00	102,748,000.00	0.00	102,748,000.00
30 Lake Travis Middle School	1,200,000.00	1,200,000.00	0.00	1,200,000.00
40 Hudson Bend Middle School	2,307,804.00	2,307,804.00	93,966.00	2,213,838.00
50 Bee Cave Middle School	1,200,000.00	1,200,000.00	0.00	1,200,000.00
91 Bond Closing	0.00	500,000.00	295,303.30	204,696.70
94 Contingency	0.00	4,355,303.00	0.00	4,355,303.00
Construction/Renovation	143,093,994.00	147,949,297.00	440,006.19	147,509,290.81
Total 2024 Bond Program	143,093,994.00	147,949,297.00	440,006.19	147,509,290.81



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Campus Presentation – Lake Pointe Elementary

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

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

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

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Stefani Vickery - Assistant Superintendent of Curriculum & Instruction
Karen Reich – Lake Pointe Elementary School Principal

ATTACHMENTS

Presentation

MEETING DATE

October 16, 2024



Lake Travis Showcase

Lake Pointe Elementary

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October 16, 2024

Principal: Karen Reich

All About Us

School opened in 2002

725 students

79 staff

Specialized programs: District CDC, PreK, ECSE

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Mission Statement: Lake Pointe Elementary is a learning community where everyone is nurtured, respected, and challenged. All individuals are encouraged to be compassionate towards each other, to be creative, to be productive, and to be successful, lifelong learners.



Campus Goal

Our campus collaboratively developed a data-driven improvement plan, with our PLCs, that is instructionally focused and integrates multiple data sources. LPE plans will establish measurable student outcome targets with improvement of 5%, with fidelity and accountability systems in place for staff. We review and adjust the plan every quarter based on student progress and staff performance data to ensure continuous improvement and alignment with aggressive academic goals.

Campus Spotlight–Focus on Students

Monthly Eagle Awards

Purpose:

- Recognize students who meet the character education traits,
- Celebrate with parents about their student's accomplishments,
- Eagle Award Parade to honor and inspire LPE students.

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Campus Spotlight–Focus on Students



Campus Spotlight–Focus on Educators

Monthly Staff Challenges-The JOY factor

Purpose:

- Build campus culture,
- Cultivate relationships among staff and administrators,
- Retain high quality staff.

Campus Spotlight—Focus on Educators



STEPPING INTO SEPTEMBER

Join the race!

THE SCHOOL YEAR HAS OFFICIALLY KICKED OFF, AND NOW IT'S TIME TO LET THE 2024-2025 LPE STAFF GAMES BEGIN!

TURN ON YOUR COMPETITIVE ENGINES: OUR 3RD ANNUAL SEPTEMBER STEP CHALLENGE IS BACK WITH NEW PRIZES! LOG YOUR DAILY STEPS FROM SEPTEMBER 1ST-30TH

GET TO STEPPIN'!

A poster with a pink background. At the top, the words "STEPPING INTO SEPTEMBER" are written in a large, black, curved font. In the center is a cartoon sun with a face, arms, and legs, wearing a black top hat. Below the sun, the text "Join the race!" is written in a white, cursive font. Underneath that, there are two paragraphs of text in a simple, black font. At the bottom, the phrase "GET TO STEPPIN'!" is written in a bold, black, sans-serif font. There are several yellow stars scattered around the text.



HAUNTINGLY HYDRATED

IT'S THE TIME OF YEAR FOR WITCHES AND BROOMS,
& H₂O IS WHAT WE'LL CONSUME!

A GHOSTLY GALLON OF WATER YOU'LL DRINK,
128 OUNCES IS A GALLON...I THINK?

DRINK YOUR WATER AND FILL OUT THE FORM,
WATCH YOURSELF START TO TRANSFORM.

OUR CHALLENGE STARTS ON OCTOBER FIRST,
YOU'LL HAVE 31 DAYS TO QUENCH YOUR THIRST.

1 OUNCE = 1 POINT
128 OZ GOAL = +5 POINTS
133 POINTS = MAX POINTS IN A DAY

1ST PLACE = YETI
2ND PLACE = ZULU WATER BOTTLE
3RD PLACE = JEANS PASS

A poster with a white background. At the top, the words "HAUNTINGLY HYDRATED" are written in a black, arched font. Below that, there are three paragraphs of text in a simple, black font. At the bottom, there are two line drawings of human skeletons. Between the skeletons, there are three lines of text in a simple, black font. There are also two water droplets above the first paragraph.



Holiday Road!

A HOLIDAY GAMESHOW

A poster for a holiday gameshow. The background is a dark blue night sky with stars and colorful string lights. In the center is a yellow vintage car with a red roof rack. On the roof rack, there are several items: a blue cooler, a red cooler, a green cooler, and a red cooler. The car is driving towards the right. At the top, the words "Holiday Road!" are written in a white, cursive font. At the bottom, the words "A HOLIDAY GAMESHOW" are written in a white, bold, sans-serif font.

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LT

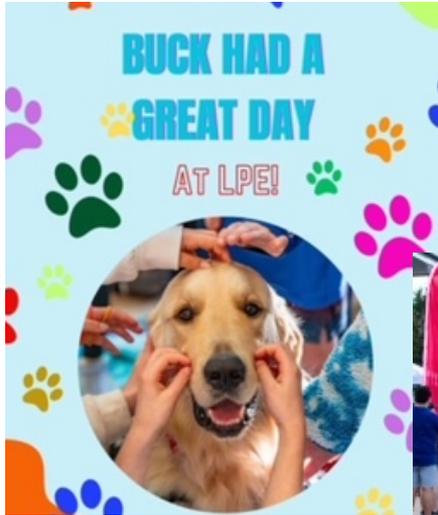
Campus Spotlight–Focus on Families

PTO Collaboration

Purpose:

- Connect families with the school community,
- Invite dads in with Watch Dogs,
- Honor Volunteers, and
- Create community events such as the LPE Color Run, Fall Festival, and the much anticipated Eagle Affair(Gala)

Campus Spotlight—Focus on Families



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Questions?



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Department Presentation – Food and Nutrition Services

RECOMMENDED ACTION

For Presentation/Discussion Only

RATIONALE

The purpose of this presentation is to offer the Board of Trustees and the community a concise snapshot of operational processes, key performance metrics, and ongoing initiatives within the Food and Nutrition Services Department at Lake Travis ISD. It will include a summary of our current revenue goals, average daily meals served, expense management strategies, and highlight a few of our past and current student engagement initiatives.

The expected outcome of this presentation is to provide the Board and the community with a clearer understanding of the department's mission, operations, and commitment to serving our students and community.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Lianka Soliz – Senior Director of Food & Nutrition Service and Transportation

Marissa Bell – Dietitian & Marketing Coordinator

ATTACHMENTS

None

MEETING DATE

October 16, 2024

Lake Travis ISD Food & Nutrition Services

Lianka Soliz, MBA
Senior Director of Food & Nutrition and Transportation

Marissa Bell, MPH, RD, LD
Dietitian & Marketing Coordinator



Lake Travis ISD Food & Nutrition Services

“Working together with passion & dedication to serve all students healthy meals, while providing excellent customer service.”

- Self-funded
- Serve over 10,000 meals per day
- Breakfast, Lunch, A la carte
- Staffing, Training & Development
- Special Diets & Nutrition Education
- Student Engagement Opportunities



Teachable Moments: Operations

LAKE TRAVIS ISD FOOD & NUTRITION SERVICES



Elementary School Lunch Account Restriction Form

If you would like to place a restriction on your student's purchases, please make your selections below. A La Carte options available for Pre-K-5th grades include, but are not limited to, items such as: cereal bars, whole grain crackers, yogurt cup, reduced-fat string cheese, pretzels, variety of baked chips, whole grain cookies, whole grain muffins, breadsticks, and a variety of low-fat ice cream treats.

- No A La Carte purchases. Meal Benefit Eligible Options Only:** Your child can only select complete meals which are covered by National School Lunch and Breakfast Program benefits. Extra or a la carte items are not allowed.
- Add an A La Carte spending limit (select one):**
 - Daily spend limit: \$ _____ (specify amount)
 - Weekly spend limit: \$ _____ (specify amount)
- Cash only for A La Carte Purchases.** Your child can only buy extras or a la carte items with cash, not with lunch account funds. Lunch account funds are reserved for meal purchases only.



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A La Carte Spending Limits



Inventory Management

Pricing Transparency



Student Menu Feedback

Verbal Prompting



Staff Menu Feedback

Teachable Moments: Nutrition



Nutrition Education



Posters & Signage



Texas Fruit & Vegetable Day



Samples



Farmer's Market Taste Tests



Unlimited Fruit & Vegetables

Teachable Moments: Farm-to-School



“Best of the Bunch” Award



Farmer's Market Scavenger Hunt



Local Food Leaders



Serve Local Foods



The Plant Parts We Eat



Bring a Chicken to School

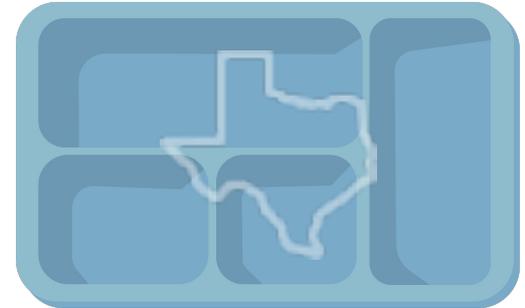
Our Future With Farm-to-School...



Hydroponic Flex Farm



Central Texas Food Hub



Texas Tray

Questions?

Lianka Soliz, MBA
solizl@ltisdschools.org

Marissa Bell, MPH, RD, LD
bellm@ltisdschools.org





AGENDA ITEM ACTION SHEET

AGENDA ITEM

Bully Prevention Month Presentation

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

Update on bully prevention.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Tasha Barker - Assistant Superintendent of Organizational Services

ATTACHMENTS

None

MEETING DATE

October 16, 2024



Bullying Prevention & Unity Day

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October 16, 2024

October is National Bullying Prevention Month

- Unity Day was started by PACER's National Bullying Prevention Center in October 2011. Unity Day began as a way to bring national attention to bullying prevention. It is a day dedicated to promoting kindness, acceptance, and inclusion- in schools, communities, corporations, and social media!
- **Why is Orange the color of Unity Day?** Orange is the common color for October and the fall season. Orange is warm, bright, and vibrant. It is also associated with safety and visibility. Orange is a bold and bright color to promote peace.
- Bullying Prevention Committees at all campuses

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Elementary Prevention Activities

- Bullying prevention classroom lessons
- School-wide kindness activities, recess kindness station, kindness posters at AM carline, wall of kindness, and kindness counseling lessons
- Unity Day: unity bands for all students and faculty and chain of kindness activity
- Crime Stoppers assemblies on bullying prevention
- Coffee with the principal, Topic: School Safety and Bully Prevention Measures
- Kindness highlights on school announcements



Secondary Prevention Activities

- Unity Day activities
- Crime Stoppers assemblies and/or lessons on bullying prevention
- Kindness quotes during morning announcements
- Kindness Challenge for each grade level
- Therapy dogs, photo booth
- Kindness pledges
- Counselor lessons on conflict resolution
- Cavalier Challenge

UNITY DAY

SHARE KINDNESS

+

PROMOTE ACCEPTANCE

+

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ENCOURAGE INCLUSION

=

BULLYING PREVENTION

 PACER's
National Bullying Prevention Center.
Create a World Without Bullying | PACER.org/bullying

 **LAKE TRAVIS**
INDEPENDENT SCHOOL DISTRICT

We, students of Lake Travis High School, recognize the importance of Unity
in our school and community. We commit to valuing the importance of

kindness, acceptance, and inclusion.

UNITY DAY

UNITED FOR
KINDNESS
ACCEPTANCE
INCLUSION

UNITY DAY

Kimberly Bohrens, Social Center
National Bullying Prevention Center.



FOLLOW US AND
TAG US ON
INSTAGRAM

©ETHS COUNSELING



We, students of Lake Travis High School, recognize the importance of Unity in our school and community. We commit to valuing the importance of *kindness, acceptance, and inclusion.*

UNITY DAY

UNITED FOR KINDNESS ACCEPTANCE INCLUSION

SHARE KINDNESS
PROMOTE ACCEPTANCE
ENCOURAGE INCLUSION
BULLYING PREVENTION



We, students of Lake Travis High School, recognize the importance of Unity in our school and community. We commit to valuing the importance of *kindness, acceptance, and inclusion.*

UNITY DAY

UNITED FOR KINDNESS ACCEPTANCE INCLUSION

SHARE KINDNESS
PROMOTE ACCEPTANCE
ENCOURAGE INCLUSION
BULLYING PREVENTION

National Bullying Prevention Center



Policies & Procedures

- All staff complete Bullying Prevention Training Annually through the EduHero Platform
- Cavs Who Care Tip Line
- Navigate 360



SB 179/David's Law

Bullying Information & Prevention

Bullying is a growing issue for schools all across the nation. Lake Travis ISD campus and district administrators encourage parents to work with us to provide a safe learning environment that encourages community involvement and engagement. Lake Travis ISD is committed to working together with parents to promote the health and well being of our students.

Definition of Bullying

"Bullying" means a single significant act or a pattern of acts by one or more students directed at another student that exploits an imbalance of power and involves engaging in written or verbal expressions, expression through electronic means, or physical conduct that occurs on or is delivered to school property or to the site of a school-sponsored or school-related activity or on a publicly or privately owned school bus or vehicle being used for transportation of students to or from school or a school-sponsored or school-related activity that: (i) has the effect or will have the effect of physically harming a student, damaging a student's property, or placing a student in reasonable fear of harm to the student's person or of damage to the student's property; (ii) is sufficiently severe, persistent, or pervasive enough that the action

Cavs Who Care Tip Line

The Cavs Who Care Tip Line provides an easy and confidential way for students and parents to report bullying, harassment, or other personal crisis. You can leave an anonymous tip on the LTISD or any campus website 24 hours a day, seven days a week. You now have the ability to engage in two-way communication with a live person and remain anonymous. However, you may consider including your name and contact information so that a campus administrator can investigate a tip more thoroughly.

Students and parents may submit a tip related to the following topics:

- Bullying





Questions?



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Strategic Planning Update

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

Update on the district strategic plan..

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Tasha Barker - Assistant Superintendent of Organizational Services

ATTACHMENTS

None

MEETING DATE

October 16, 2024



Strategic Planning Committee Update⁸²

October 16, 2024

1st Meeting

Prior to the September 24 meeting:

- Review the current strategic plan.
- Familiarize yourself with the district's mission, vision, and key objectives.
- Review the 23-24 survey data results.
- Come ready to participate in a discussion about homework insights, generating new ideas, setting priorities, and identifying potential challenges.

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Strategic Planning Committee Meeting

September 24, 2024
5:30 p.m. - 7:30 p.m. |

AGENDA

1. Welcome & Introductions
2. Strategic Plan Pillars
3. Setting Committee Norms
4. Strategic Plan and Survey Data Activity
5. Strategic Planning Committee Google Drive Workspace
6. Strategic Plan Sub-Committee
7. Q&A
8. Next Meeting -5:00 p.m., December 3, 2024



Resilience Subcommittee

Mental, Physical, and Nutritional Well-Being

Purpose:

To strengthen the overall resilience of students and staff by promoting ⁸⁵ mental health support, and physical and nutritional well-being, ensuring that personal success is supported through comprehensive wellness initiatives.

Relationships Subcommittee

Family and Community Engagement

Purpose:

To strengthen partnerships between schools, families, and the broader community, enhancing parent engagement and creating collaborative opportunities for staff to connect with families and community leaders. 86

Real-World Readiness Subcommittee

Skills, Innovation, and Pathways

Purpose:

To prepare students for real-world success by fostering critical skills, promoting innovation, and enhancing career and college readiness. This subcommittee will collaborate with students, staff, and community partners to ensure that learning experiences align with industry needs and future opportunities.

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Next Meeting

December 3, 2024
5:30 p.m. -7:30 p.m.
EDC

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LT



Questions?



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Beginning of the year Universal Screener Data K-5

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

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

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Stefani Vickery - Assistant Superintendent of Curriculum & Instruction

Dr. Lyndsaë Benton - Executive Director of Curriculum & Instruction

Kathy Burbank - Director of Accountability & Assessment

ATTACHMENTS

Presentation

MEETING DATE

October 16, 2024



Universal Screener
Beginning of Year
Data Fall 2024

Universal Screeners

Purpose:

Provides the data educators need to predict gaps in learning in individual students, classrooms, and grade levels. Teachers can provide extra practice and additional, intentional instruction right away, when⁹² the learning gaps are still small, to prevent larger learning gaps later.

In LTISD we administer NWEA MAP Growth & Amplify mCLASS.

map GROWTH

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

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

How to read the data...

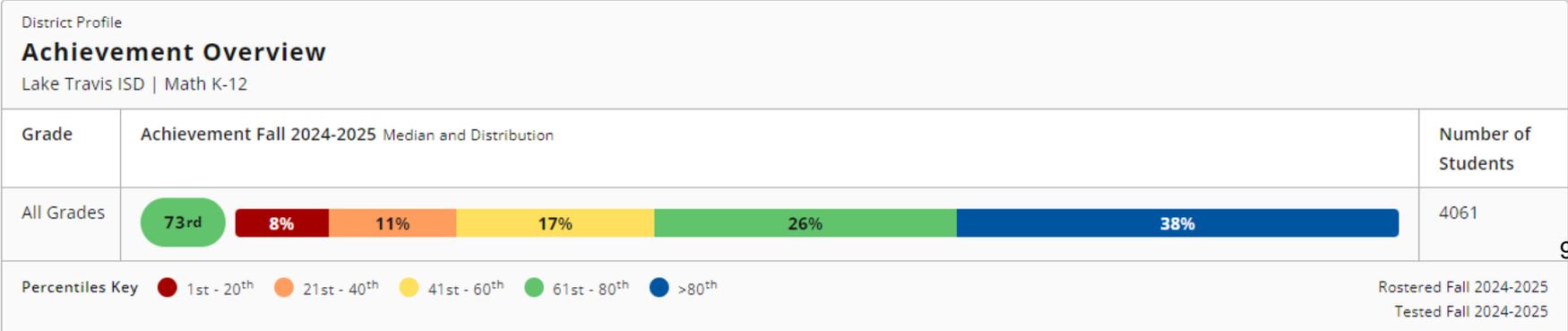
The students are given a percentile score based on national norms set in 2020.

A student with a 70th percentile had 30% of the students score above and 70% of the students below their score. 50th percentile is the median. ⁹⁴

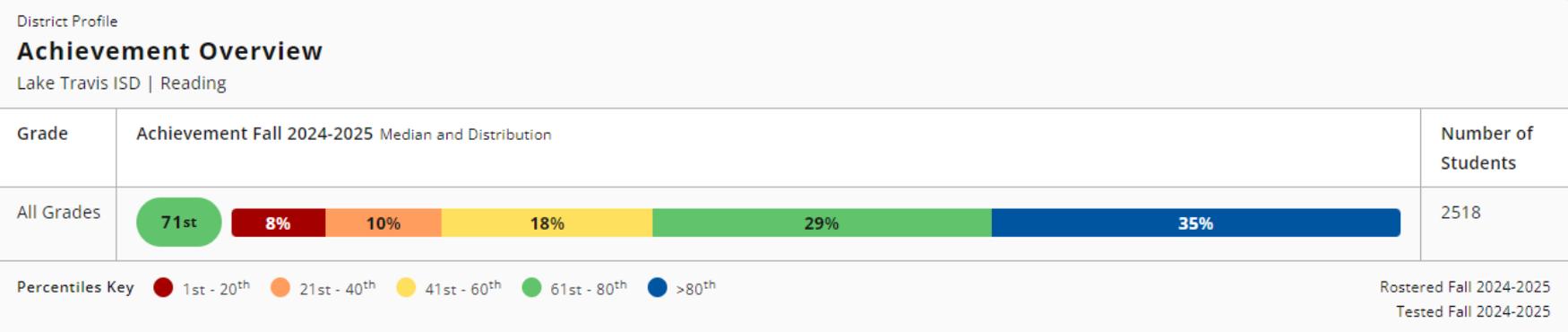
In Lake Travis ISD, if a student scores below the 25th percentile then they are considered for the MTSS (Multi-Tiered System of Supports) process to target support for struggling students.

Low %tile <21	LoAvg %tile 21-40	Avg %tile 41-60	HiAvg %tile 61-80	High %tile >80
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MAP Growth BOY Summary



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Math MAP Growth BOY Summary

District Profile

Achievement by Grade

Lake Travis ISD | Math K-12

Grade ↓	Achievement Fall 2024-2025 Median and Distribution	Sort by -- select an option --	Average RIT	Number of Students
Grade 5	72nd 		217	831
Grade 4	72nd 		207	793 96
Grade 3	69th 		195	797
Grade 2	73rd 		183	788
Grade 1	74th 		168	676
K	67th 		145	176

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

More information about this chart. ▾

Rostered Fall 2024-2025
Tested Fall 2024-2025

BOY is not required for Kindergarten. Optional



Reading MAP Growth BOY Summary

District Profile					
Achievement by Grade					
Lake Travis ISD Reading					
Grade	Achievement Fall 2024-2025	Median and Distribution	Sort by	Average RIT	Number of Students
Grade 5	72nd	7% 10% 16% 31% 36%	-- select an option --	212	823
Grade 4	73rd	8% 9% 18% 31% 34%		205	789 97
Grade 3	69th	10% 11% 19% 26% 34%		193	797
Grade 2	78th	6% 10% 20% 23% 41%		182	90
Grade 1	53rd	26% 11% 32% 10% 21%		157	19

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

Rostered Fall 2024-2025
Tested Fall 2024-2025

MAP Growth for grades 1 and 2 are optional. Grades K-2 test with mCLASS for Reading



Correlation to STAAR Performance

Exams	% Approaches	% Meets	% Masters
May 2024 STAAR Mathematics, Grade 3 (2023-2024)	19.8	44.6	35.6
Spring 2023-2024 NWEA Growth: Math 2-5 TX 2012, Grade 3 (2023-2024)	25.6	41.2	33.2
May 2024 STAAR Mathematics, Grade 4 (2023-2024)	16.9	36.2	47
Spring 2023-2024 NWEA Growth: Math 2-5 TX 2012, Grade 4 (2023-2024)	22.5	31.6	45.8
May 2024 STAAR Mathematics, Grade 5 (2023-2024)	17.5	43.7	38.7
Spring 2023-2024 NWEA Growth: Math 2-5 TX 2012, Grade 5 (2023-2024)	22.5	41	36.5
May 2024 STAAR RLA, Grade 3 (2023-2024)	17.2	41.8	41
Spring 2023-2024 NWEA Growth: Reading 2-5 TX 2012, Grade 3 (2023-2024)	20.3	32.7	47
May 2024 STAAR RLA, Grade 4 (2023-2024)	15.4	42.8	41.8
Spring 2023-2024 NWEA Growth: Reading 2-5 TX 2012, Grade 4 (2023-2024)	23.9	29.1	46.9
May 2024 STAAR RLA, Grade 5 (2023-2024)	10.5	35	54.4
Spring 2023-2024 NWEA Growth: Reading 2-5 TX 2012, Grade 5 (2023-2024)	15	30	54.9

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Actual performance on STAAR as compared to Spring MAP Growth 2024 as referenced in Linking Study (MAP does not include any writing components)



mCLASS® TX Edition

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

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Reading mCLASS BOY Summary

Account ▾	Well Below Benchmark ▾	Below Benchmark ▾	At Benchmark ▾	Above Benchmark ▾	Total Students ▾
Lake Travis ISD Current as of 09/21/2024					
Grade K					
Lake Travis ISD	24-25 BOY 101(16%)	118(19%)	151(24%)	256(41%)	626 100
Grade 1					
Lake Travis ISD	24-25 BOY 102(16%)	90(14%)	229(35%)	223(35%)	644
Grade 2					
Lake Travis ISD	24-25 BOY 96(13%)	75(10%)	234(31%)	342(46%)	747

Provide additional data as requested



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Board Notification under Board Policy CH (LOCAL) – Fleet Copiers and Service

RECOMMENDED ACTION

For Presentation/Discussion Only.

RATIONALE

The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs \$100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases that cost \$100,000 or more, but shall subsequently report them to the Board:

1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law.
2. A purchase made through a cooperative purchasing program, in accordance with law.
3. A purchase made through a state purchasing program that satisfies the District's obligation for competitive purchasing;
4. A purchase for produce or fuel.

Lake Travis ISD has a budgeted purchase that requires Board notification for 26 Canon copiers in the amount of \$171,828.62 representing year 1 of the replacement cycle. The copiers are replacing older and high use machines at Bee Cave Elementary, Lake Travis Elementary, West Cypress Hills Elementary and Lake Travis High School.

BUDGET PROVISIONS

2023 Bond Program - \$171,828.62

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Brad Goerke – Director of Finance

Cristy Soares – Director of Purchasing

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Technology Purchase Notification

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

The 2024-2025 Technology operating budget includes funding for the annual purchase of Microsoft Enterprise licensing and software assurance. The district's increase in additional staff for 2024-2025 has resulted in an increase in our Microsoft Enterprise subscription licensing and the associated cost. Therefore, per Board Policy CH (Local), the following budgeted purchase over \$100,000 is required to be presented to the Board for notification:

Therefore, Technology has purchased the annual Microsoft Enterprise subscription licensing for the 2024-2025 school year from SHI for \$101,504.00

BUDGET PROVISIONS

2024-2025 Operating Budget

RESOURCE PERSONNEL

Chris Woehl - Executive Director for Technology and Information Systems

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Technology Bond Expenditure Report

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

The 2023 Bond Program provided funding for purchasing technology items, such as classroom educational and instructional equipment and infrastructure and operational equipment. Decisions about educational technology and infrastructure equipment have been discussed, planned, and vetted with the district stakeholders and the District's Long Range Facilities Planning Committee. Per Board Policy CH (Local), the following purchases were made via a cooperative purchasing program of \$100,000 or more, are required to be presented to the Board for notification:

Additional Wi-Fi equipment and Local Area Network (LAN) infrastructure were for non-instructional sites to complete upgrades district-wide. This turnkey hardware and software were purchased leveraging the Texas DIR contract and volume purchase pricing for the total purchase price of \$333,974.10

BUDGET PROVISIONS

2023 Bond Funds

RESOURCE PERSONNEL

Chris Woehl - Executive Director for Technology and Information Systems

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Technology Bond Expenditure Report

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

The 2023 Bond Program provided funding for purchasing technology items, such as classroom educational and instructional equipment and infrastructure and operational equipment. Decisions about educational technology and infrastructure equipment have been discussed, planned, and vetted with the district stakeholders and the District’s Long Range Facilities Planning Committee. Per Board Policy CH (Local), the following purchases were made via a cooperative purchasing program of \$100,000 or more, are required to be presented to the Board for notification:

The Centegix Safety Platform was purchased to add to our unified communications safety portfolio. This platform complies with SB838, also known as Alyssa’s Law, which mandates schools to install silent panic alert systems. The turnkey installation includes hardware, software, licensing, and maintenance, and is provided through Five Stones Safety utilizing the TIPS purchasing cooperative. The total purchase price for the turnkey solution is \$973,900.

BUDGET PROVISIONS

2023 Bond Funds

RESOURCE PERSONNEL

Chris Woehl - Executive Director for Technology and Information Systems

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Guaranteed Maximum Price (GMP) for CMR 23-02 for Elementary School #8

RECOMMENDED ACTION

For Presentation/Discussion only; action will be requested at the November 20, 2024 board meeting.

RATIONALE

Present the Guaranteed Maximum Price (GMP) for CMR-23-02, Elementary School #8 on Hamilton Pool Road, in the amount of \$77,946,914 and authorize the Superintendent or his designee to negotiate and execute the GMP.

Bartlett Cocke is the general contractor, and the project includes the construction of a split-level elementary school serving grades K through 5 with playgrounds, parking and driveways for the campus. The project also includes a right turn lane into the school on Hamilton Pool Road and an entry drive from the Provence subdivision along with the required rainwater detention ponds and major utility installation to support the school.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services
Robert Winovitch – Director of Facilities and Construction
Cristy Soares – Director of Purchasing

ATTACHMENTS

Elementary School #8 A201-2017
Elementary School #8 A133-2019

MEETING DATE

October 16, 2024



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

HPR Elementary #8
CMR 23-02

THE OWNER:

(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

THE ARCHITECT:

(Name, legal status and address)

Pfluger Architect
209 Riverside Dr.
Austin, TX 78704
512-476-4040

THE CONTRACTOR:

Bartlett Cocke General Contractors
3330 Caseybridge Ct.
Austin, TX 78744
512-326-4223

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

User Notes:

(926369402)

- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES
- 16 BUSINESS ETHICS
- 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION
- 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 The Work

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

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

(Paragraphs deleted)

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

Intentionally deleted. .

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor

All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

1.1.10 Miscellaneous Other Words

1.1.10.1 Business Day

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

1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days. Unless otherwise specified, the reference to "day" in the Contract will be considered a calendar day.

1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or

unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- .1 Contract Modifications signed by Contractor and Owner.
- .2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- .3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project
- .4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- .5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the any reserved rights

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed \$100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

§ 2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work .

§ 2.2.2 Intentionally deleted.

§ 2.2.3 Intentionally deleted.

§ 2.2.4 Intentionally deleted.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's

additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section. Contractors' evaluation of the site is limited to visual observations.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.
- .2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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

3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays, disruptions, or interference to the Work caused by or within the control of the Contractor, even if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Owner. This limitation on damages is further subject to the limitations set forth in Section 15.1.7. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time and General Conditions.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

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

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

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

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

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall

immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§ 3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at <https://www.wdol.gov/> or <https://beta.sam.gov/>) effective as of the date of this Agreement.

§ 3.4.2 Intentionally deleted.

§ 3.4.2.1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; and (iii) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No

substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

§ 3.4.2.3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

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

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

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 3.5.8 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for Work to be

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completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect or the date of final payment.

§ 3.5.9 Contractor disclaims all implied warranties including but not limited to warranties of merchantability and fitness for a particular purpose.

§ 3.6 Taxes

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 3.7.2 In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

(Paragraphs deleted)

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

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

operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

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

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

- .1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.
- .2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that

Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

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

§ 3.9.3 The Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) for each day.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

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

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

- .1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 Contractor shall make available, at the Project site, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

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

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

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

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

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

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

and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or

manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, AND ITS RESPECTIVE DIRECTORS, TRUSTEES, OFFICERS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE: (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE OR PARTIAL NEGLIGENCE OF OWNER; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

§ 3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK., THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

§ 3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

Init.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

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

§ 3.20 BUSINESS STANDARDS

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

§ 3.21 ANTITRUST VIOLATION

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Intentionally deleted.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

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

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information at no additional expense to the Owner.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

(Paragraphs deleted)

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

- .1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work.

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

Init.

- .1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10% of the cost (0% for change orders to be paid out of any contingency allowance).
- .2 For the Contractor, for the Work performed by the Contractor's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
- .4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.
- .5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

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

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 7.1.4. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change only if the adjustment causes an extension of the Contract Time.

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than sixty (60) days after the date of Substantial Completion.

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

§ 8.2 Progress and Completion

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

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

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

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.7 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time and General Conditions for completion equal to the delay if a written claim is made within seven (7) days.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays, disruptions, or interference to the Work caused by or within the control of the Contractor, even if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Owner. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time and General Conditions.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect other data as reasonably requested by Owner or Architect.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.2 Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.

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

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

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 Defective Work not remedied;
- .2 Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 Damage to the Owner or a Separate Contractor;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 Repeated failure to carry out the Work in accordance with the Contract Documents;

- .8 Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- .9 Evidence of financial inability to perform the Contract fully;
- .10 Failure to submit record documents required by the Contract; or
- .11 Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

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

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

- .1** If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.
- .2** Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the

Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner or the Owner's property might be responsible have been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or

refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of any claims by the Owner.

§ 9.10.4

(Paragraphs deleted)
Intentionally deleted.

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

§ 9.11 AUDIT

§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

- .1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled stance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.
- .2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.
- .3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.
- .4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).
- .5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

§ 10.2.5 CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER'S CONSULTANT'S, OR ARCHITECT'S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER'S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

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

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

(Paragraphs deleted)

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

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

§ 10.3.3 The Owner shall be responsible for any claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the performance of the Work in the affected area, 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 third-party.

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Intentionally deleted.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract

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Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Intentionally deleted.

§ 11.1.4 Intentionally deleted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally deleted.

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 Intentionally deleted.

(Paragraph deleted)

§ 11.3.2 Intentionally deleted.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Intentionally deleted.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 Intentionally deleted.

§ 11.5.2 Intentionally deleted.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

(Paragraph deleted)

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

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

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

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

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or

within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such

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tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Owner shall provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

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

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

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

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

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents.
- .4 Intentionally deleted.

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

- .4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner
- .5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or
- .6 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause by giving Contractor seven (7) days notice.

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

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

§ 14.4.3 In case of termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Intentionally deleted.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Architect is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Owner's decision, subject to the right of the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the Guaranteed Maximum Price, notice as provided in Section 15.1.3 shall be given to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such Claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by

reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

(Paragraphs deleted)

§ 15.1.7 Calculating Claims for Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- .4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 15.2 Initial Decision

§ 15.2.1 1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

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

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Architect when the response or supporting data will be furnished, or (3) advise the Architect that no supporting data will be furnished.

§ 15.2.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Intentionally deleted. .

§ 15.2.6.1 Intentionally deleted.

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

§ 15.2.8 Waiver of Lien

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

§ 15.3 Mediation

§ 15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator’s fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner’s main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner’s Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner’s sole discretion, the Contractor may not bring a legal action against the Owner unless:

- .1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor’s Claim, dispute or other matter, and
- .2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor’s Claim, dispute or other matter.

§ 15.4 Arbitration

§ 15.4.1 The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

§ 15.4.4 Intentionally deleted.

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.

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

§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys’ fees may be awarded to the prevailing party

ARTICLE 16 BUSINESS ETHICS

§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

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

§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

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

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

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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

§ 18.2 The Contractor must:

- .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;
- .2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,
- .3 On completion of the Contract, either:
 - .1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or
 - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

- .4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.
- .5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
- .6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

**OWNER:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT**

**CONTRACTOR:
BARTLETT COCKE GENERAL CONTRACTORS**

By:

Signature

Paul Norton, Superintendent

(Printed name and title)

Date:

By:

Signature

(Printed name and title)

Date:

Additions and Deletions Report for **AIA® Document A201® – 2017**

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

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HPR Elementary #8
CMR 23-02

...

(Name, legal status and address)

Lake Travis ISD
3200 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6300

...

(Name, legal status and address)

Pfluger Architect
209 Riverside Dr.
Austin, TX 78704
512-476-4040

THE CONTRACTOR:

Bartlett Cocke General Contractors
3330 Caseybridge Ct.
Austin, TX 78744
512-326-4223

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16 BUSINESS ETHICS

17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution

of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail.

§ 1.1.1.1 The Agreement

The Agreement, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Trustees.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. ~~The Contract may~~ After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

...

The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents. "Construction Documents" means: all Drawings, Specifications, geotechnical reports, Addenda, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 3.1.4 of AIA Document B101-2017. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

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§ 1.1.7 Instruments of Service

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

§ 1.1.7 Instruments of Service

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

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~Intentionally deleted.~~

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 Contractor

All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

1.1.10 Miscellaneous Other Words

1.1.10.1 Business Day

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

1.1.10.2 Calendar Day

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days. Unless otherwise specified, the reference to "day" in the Contract will be considered a calendar day.

1.1.10.3 Holidays

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.1.10.4 Work Day

Work days include all calendar days except Holidays, Saturdays and Sundays.

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§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.4 Precedence of the Contract Documents

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- .1 Contract Modifications signed by Contractor and Owner.
- .2 Addenda (including GMP Amendment), with those of later date having precedence over those of earlier date.
- .3 Agreement – AIA Document A133-2019, as modified by the Owner for the Project

.4 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

.5 Specifications and Drawings.

§ 1.2.5 Relation of Specifications and Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.6 Where, in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.7 When the Work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall a

§ 1.2.8 Requirements of public authorities apply as minimum requirements only and do not specified requirements.

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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.any reserved rights

...

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

§ 1.8 Building Information Models Use and Reliance

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement Board of Trustees of the Lake Travis Independent School District and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power

to: enter into a contract; amend a contract, including but not limited to the AIA Document A-133 Exhibit A; approve changes in the scope of Work; approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price; agree to an extension to the date of Substantial or Final Completion; or terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his/her designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed \$100,000, or will not increase the dates for Substantial or Final Completion by more than thirty (30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in the Contract Documents, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

§ 2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately. Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents. Intentionally deleted.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Intentionally deleted.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information. Intentionally deleted.

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~~§ 2.3.5 The Owner shall furnish information-Information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services shall be furnished by the Owner within a reasonable time following actual receipt of a written request.~~

~~§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.~~

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~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. § 2.4.1 If the Contractor fails to correct Work nonconforming or defective Work as required by Section 12.2, or fails to complete the Work on time as required by Article 3 of the Agreement or is in default of any of its material obligations hereunder, the Owner, by a written order signed by an agent specifically so empowered by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.~~

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~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. § 2.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~

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~~§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.~~

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

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section. Contractors' evaluation of the site is limited to visual observations.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to ~~Section 2.3.4,~~ Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner.
- .2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

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§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of ~~Sections 3.2.2~~ Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

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

3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays, disruptions, or interference to the Work caused by or within the control of the Contractor, even

if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Owner. This limitation on damages is further subject to the limitations set forth in Section 15.1.7. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time and General Conditions.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents or otherwise agreed by Owner. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

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§ 3.3.1.1 The Contractor shall assign a superintendent who shall make decisions on behalf of the Contractor and its Subcontractors. The superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress.

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§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, et seq.

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

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

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and

permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.3.10 In the event Contractor shall fall behind schedule at any time, for any reason, Owner shall be entitled to direct acceleration or resequencing of the Work to bring the Work back on scheduled. Contractor shall be entitled to compensation from the Construction Contingency, or if such contingency funds are exhausted, pursuant to Change Order, for such acceleration only (a) to the extent necessitated by excusable and compensable delays, and (b) to the extent of premium pay and additional equipment cost actually incurred by Contractor. In the event Contractor determines that he Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site. The Contractor shall secure and arrange for all necessary utility connections.

3.4.1.1 PREVAILING WAGES

The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.1.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction. Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§ 3.4.1.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.1.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerning labor, equal employment opportunity, safety, and minimum wage.

§ 3.4.1.5 If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at <https://www.wdol.gov/> or <https://beta.sam.gov/>) effective as of the date of this Agreement.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Intentionally deleted.

§ 3.4.2.1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; and (iii) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations.

§ 3.4.2.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

§ 3.4.2.3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Project Site is a public school campus, and will prohibit the possession or use of alcohol, controlled stances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.5 CRIMINAL HISTORY RECORDS CHECKS

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

§ 3.4.5.2 Contractor will not assign any "covered employee" with a "disqualifying criminal history," as those terms are defined below, to work on the Project. If Contractor receives information that a covered employee has a reported disqualifying criminal history, including any such information shared by Owner, then Contractor will immediately

remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Contractor agrees to discontinue using that covered employee to provide services on Owner's Project. If Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any of Contractor's subcontractors will not become covered employees, Contractor will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

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

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

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§ 3.5.3 The Contractor agrees to assign to the Owner at the Time of Final Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties from contractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents.

§ 3.5.4 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Agreement, at law, or in equity for defective Work.

§ 3.5.5 The warranties provided in Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if latent defect, within one (1) year after discovery thereof by Owner.

§ 3.5.6 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Sections 3.5.2 and 3.5.3 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.7 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise satisfactory to the Owner. Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion or Final Completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each phase or building which is substantially complete will expire, and dates of Final Completion. Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one (1) month prior to the expiration of the one (1) year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one (1) year warranty period, Contractor shall accompany the Owner and Architect on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by various sections, i.e., roofing, compressors, mechanical equipment, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within three (3) days of initial notification from Owner. Contractor shall prosecute the Work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the

expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Contractor's warranty obligations described in this Section shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

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

§ 3.5.9 Contractor disclaims all implied warranties including but not limited to warranties of merchantability and fitness for a particular purpose.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.1 The Contractor may not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In performing its obligations hereunder, the Contractor shall fully comply with all applicable laws, ordinances, rules, regulations, lawful orders and decrees of all applicable authorities, and when requested shall furnish evidence satisfactory to the owner of such compliance.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify, defend and hold harmless the Owner, its trustees, officers, representatives, agents and employees from and against all claims, fines, penalties, or liabilities from or arising out of such Work, or based upon the actual or asserted violation of any laws, ordinances, rules, regulations, orders or decrees applicable to such Work.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.4 Concealed or Unknown Conditions, Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of

conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if conditions are encountered at the site which are concealed physical conditions which were not known to the Contractor and which differ substantially from those indicated in the Contract Documents, then the Contractor shall notify the Owner and the Architect of such conditions promptly before conditions are disturbed, and in no event less than three (3) days after first observation of the conditions. The Architect will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to mediation pursuant to Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

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

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

3.8.4 When performing Work under allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value for the Owner.

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

communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14 day period shall constitute notice of no reasonable objection. Contractor shall furnish a list to the Architect of all engineers, consultants, job-site superintendents, Subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner.

- .1 The Owner may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.
- .2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.
- .3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the Owner's inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Owner shall be notified not less than twenty-four (24) hours before any time that superintendent will not be present at the site for any reason except illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being back charged in the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) for each day.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, contractor's initial constructions schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed the time limits set forth in the Contract Documents. The initial schedule shall thereafter be updated on a monthly basis and submitted with each application for payment. The receipt of an updated schedule with each application for payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6.

- .1 Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project case flow for the Project.
- .2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.
- .3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .4 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the

- anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.
- .5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.
 - .6 Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

- .1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5.
- .2 The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

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

§ 3.10.6 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

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§ 3.11.1 Contractor shall make available, at the Project site, job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy not be responsible for the adequacy of the performance and design criteria provided specified in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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§ 3.12.10.3 The Architect's review of Contractor's submittals will be limited to one examination of an initial submittal and one (1) examination of a resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent or near to the Project site.

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§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Owner.

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor and shall, not less than two times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project materials, and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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

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~~§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.~~
TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, AND ITS RESPECTIVE DIRECTORS, TRUSTEES, OFFICERS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE:(1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN BY ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE OR PARTIAL NEGLIGENCE OF OWNER; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER, IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

~~§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.~~
IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACT OR INSURANCE, DISABILITY ACTS OR INSURANCE OR OTHER EMPLOYEE BENEFIT ACTS OR RELATED INSURANCE.

§ 3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK., THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

§ 3.18.4 Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Architect pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

§ 3.18.5 THE PROVISIONS OF ARTICLE 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

§ 3.19 REPRESENTATIONS AND WARRANTIES

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

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

§ 3.20 BUSINESS STANDARDS

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

§ 3.21 ANTITRUST VIOLATION

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

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~~§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.~~ Intentionally deleted.

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

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§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Owner nor Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the ~~Project Communications~~ Project Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work will be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall govern if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents.

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

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§ 4.2.11 ~~The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.~~ Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations~~

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's-Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. Documents and not expressly overruled in writing by the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for ~~information~~ information at no additional expense to the Owner.

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

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

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§ 5.3.1 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.2 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

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

- .1 — assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 — assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

- § 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. ~~The~~ Upon written approval by Owner and Architect, the Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules so approved by Owner shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

...

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

...

§ 7.1.4 On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead and profit included in the total cost to the Owner shall be based upon the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10% of the cost (0% for change orders to be paid out of any contingency allowance)).
- .2 For the Contractor, for the Work performed by the Contractor's Subcontractors, four percent (4%) of the amount due the Subcontractors (0% for the change orders to be paid out of any contingency allowance).
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent (10%) of the cost.
- .4 The costs to which the above percentages shall be applied will be determined in accordance with Section 7.3.7.
- .5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including quantities and unit costs of labor and materials extended and totaled.

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect-initiated by the Owner and signed by the Owner and the Contractor for the reasons set forth in Subsection 8.2.2 and stating their agreement upon all of the following:

- .2 The amount of the adjustment, if any, ~~in to~~ the Contract Sum; and
- .3 The extent of ~~the adjustment, if any, in the Contract Time~~ adjustment, if any, to the Contract Time.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

...

- .4 As provided in ~~Section 7.3.4~~ Section 7.3.4

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. Section 7.1.4. In such case, and also under ~~Section 7.3.3.3~~ Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this ~~Section 7.3.4~~ Section 7.3.4 shall be limited to the following:

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- .4 Costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the ~~change~~ change only if the adjustment causes an extension of the Contract Time.

...

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect, plus overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

...

§ 8.1.2 The date of commencement of the Work is ~~the date established in the Agreement~~ shall be the first business day following the Contractor’s written notice to proceed. The notice to proceed shall not be issued until the Agreement has been signed by the Contractor and the Owner, the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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

8.1.3.1 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than sixty (60) days after the date of Substantial Completion.

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

...

§ 8.2.4 In the event Substantial Completion or Final Completion are not achieved by the designated dates, or as the dates may be extended, Owner may withhold payment of any further sums due until Substantial Completion and/or Final Completion are achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 8.2.5 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and Final Completion in accordance with the timeline set forth in the Agreement, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set forth in the Agreement, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion and/or beginning upon Substantial Completion and continuing until Final Completion is achieved. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.6 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.7 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine. The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time and General Conditions for completion equal to the delay if a written claim is made within seven (7) days.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays, disruptions, or interference to the Work caused by or within the control of the Contractor, even if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Owner. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time and General Conditions.

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§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract.

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and

~~unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~ § 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

~~§ 9.3.1 At least ten days before the date established for each progress payment, In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents, other data as reasonably requested by Owner or Architect.~~

~~§ 9.3.1.1 As provided in Section 7.3.9, Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~

...

9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

~~§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Except as otherwise agreed in writing, executed by the Owner and Contractor prior to delivery of material and equipment, the Contractor is not entitled to payment for material and equipment delivered and stored on site or off site. The Owner may, in the Owner's sole discretion, agree to make payment for materials stored on site or off site and may, as a condition precedent to the grant of such consent, establish reasonable procedures and requirements (including provision of additional insurance at Contractor's sole expense) with which Contractor must comply.~~

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

9.3.4 In each Request for Payment, Contractor shall certify that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date

or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filling of any mechanics' or materialmen's liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

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

- .1 defective-Defective Work not remedied;
- .2 third-Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure-Failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable-Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage-Damage to the Owner or a Separate Contractor;
- .6 reasonable-Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated-Repeated failure to carry out the Work in accordance with the Contract Documents-the Contract Documents;
- .8 Delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- .9 Evidence of financial inability to perform the Contract fully;
- .10 Failure to submit record documents required by the Contract; or
- .11 Failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 ~~When either party disputes the Architect's~~ If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party-the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

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§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within twenty-one (21) days if Owner disputes the Architect's Certificate for Payment, pursuant to Texas Government Code section 2251.042 et. seq., listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after shall, within ten (10) days following receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make

payments to Sub-subcontractors in a similar manner pay all undisputed bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

...

~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.~~

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, the amount certified by the Architect and approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~ appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

...

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

.1 If, in Architect's opinion during the inspection, the Project, or the designated portion thereof which Owner has agreed to accept separately, is not sufficiently complete to warrant inspection, or if the list of items to be completed or corrected is not sufficiently complete to warrant inspection, then Architect may terminate the

inspection and notify the Contractor that the Project is not ready for inspection. If for such reasons, Architect is required to make additional inspections, the Owner may deduct the cost of Architect's additional services made necessary thereby from any payments due the Contractor. The Architect's compensation shall be determined in accordance with the applicable provisions of the Agreement between the Owner and Architect.

2. Except with the consent of the Owner, the Architect will perform no more than ONE (1) inspection to determine whether the Work has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect, Engineer, Consultant or service provider for any additional inspections.

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§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.8.7 The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued and accepted by the Owner in writing, regardless of the stated date of Substantial Completion. The Contractor shall not be responsible for utility or insurance certificates in areas that have been accepted by the Owner. The Architect shall not unreasonably delay Certification of Substantial Completion if all requirements of Section 9.8.1 and any additional requirements for Substantial Completion in the Project Manual have been met.

...

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

...

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

...

§ 9.10.1 ~~Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract~~ When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment ~~stating that to the best of the Architect's knowledge, information and belief, and on the basis~~

~~of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.~~

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

~~§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. The Final Payment shall not constitute a waiver of Claims. any claims by the Owner.~~

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~
~~.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 — terms of special warranties required by the Contract Documents; or~~
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment. Intentionally deleted.~~

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§ 9.11 AUDIT

~~§ 9.11.1 Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all~~

such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

§ 10.1 Safety Precautions and Programs

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

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

- .1 Contractor's employees, agents, and Subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.
- .2 Contractor has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.
- .3 Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.
- .4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).
- .5 Owner has also banned the presence of all weapons on the Project site, whether the owner thereof has a permit for a concealed weapon or not.

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

- .1 employees on the Work on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby; thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or

improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

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

§ 10.2.5 ~~The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.~~ CONTRACTOR SHALL HOLD OWNER HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS ON OR OFF THE SITE AND/OR IN TRANSIT AS REFERRED TO IN CLAUSE 10.2.1.2 EVEN IF SUCH LOSS OR DAMAGE RESULTS FROM OWNER, OWNER'S CONSULTANT'S, OR ARCHITECT'S NEGLIGENCE. AS TO PROPERTY REFERRED TO IN CLAUSE 10.2.1.3, CONTRACTOR SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE IS CAUSED IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, OWNER'S CONSULTANTS OR ARCHITECT. THE FOREGOING OBLIGATIONS OF THE CONTRACTOR ARE IN ADDITION TO HIS OBLIGATIONS UNDER SECTION 3.18; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.

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§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

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§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons

or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against. The Owner shall be responsible for any claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the 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, area, 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-third-party.~~

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3–Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

~~§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of a hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. Intentionally deleted.~~

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~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. § 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~

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~~§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Intentionally deleted.~~

~~§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. Intentionally deleted.~~

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~~§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Intentionally deleted.~~

~~§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto. Intentionally deleted.~~

~~§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. Intentionally deleted.~~

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~~§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Intentionally deleted.~~

~~§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 11.3.2 Intentionally deleted.~~

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused. Intentionally deleted.

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§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. Intentionally deleted.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. Intentionally deleted.

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

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

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

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

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof ~~or after the date for commencement of warranties established under Section 9.9.1, or thereof,~~ or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner

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§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

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

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, the Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by

agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.

§ 12.2.9 Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under the Contract Documents, at law or in equity, for defective Work.

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The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. Contract, including any disputes related to the Work and/or Contract Documents, shall be governed by the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of said County. No provision of this Agreement shall waive any immunity or defense.

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

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. for tests, inspections, and approvals. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing, and inspection services, and the verification testing services necessary for acceptance of the facility by Owner. The Contractor shall give the Architect timely written notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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Payments—Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251.

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

§ 13.7 CONTRACTORS RECORDS

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

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner.

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

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

§ 13.8 NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries to this agreement.

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§ 14.1.1 ~~The Contractor may terminate the Contract if~~ If the Work is stopped for a period of ~~30~~ thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work, ~~for any of the following reasons:~~ the Work under direct or indirect contract with the Contractor, for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

...

- ~~.2~~ .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- ~~.3~~ .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made the Owner has not made a payment on a Certificate for Payment within the time stated in the Contract Documents; ~~or Documents.~~
- ~~.4~~ .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2. ~~Intentionally deleted.~~

§ 14.1.2 ~~The Contractor may terminate the Contract if,~~ If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in ~~Section 14.3,~~ Section

14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

~~§ 14.1.3~~ If one of the reasons described in ~~Section 14.1.1~~ Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination, in an amount which would have been recoverable had the termination been for the Owner's convenience.

~~§ 14.1.4~~ If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in ~~Section 14.1.3~~ Section 14.1.3.

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- ~~2~~ fails to make payment to Subcontractors ~~or suppliers for materials or labor~~ in accordance with the respective agreements between the Contractor and the Subcontractors ~~or suppliers;~~ Suppliers;
- ~~3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- ~~4~~ or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner
- ~~5~~ fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or
- ~~4~~ ~~6~~ otherwise is guilty of substantial breach of a provision of the Contract Documents.

~~§ 14.2.2~~ When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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- ~~2~~ Accept assignment of subcontracts pursuant to ~~Section 5.4;~~ Section 5.4; and
- ~~3~~ Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the contract Documents.

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

~~§ 14.2.4~~ If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

...

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

§ 14.3.2 The Contract Sum and Contract Time ~~shall be adjusted for~~ may be adjusted by mutual written agreement for reasonable, actual, and verifiable increases in the cost and time caused by suspension, ~~delay, or interruption under Section 14.3.1. delay or interruption as described in Section 14.3.1.~~ Adjustment of the Contract Sum shall include reasonable profit. No adjustment shall be made to the ~~extent~~ extent:

- .1 that performance is, ~~was, or would have been, so suspended, delayed, or interrupted, was or would have been so suspended, delayed or interrupted~~ by another cause for which the Contractor is responsible; or

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without ~~cause~~ cause by giving Contractor seven (7) days notice.

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

...

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase ~~orders~~ orders related to the Project.

§ 14.4.3 In case of ~~such~~ termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~ executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

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§ 15.1.2 Time Limits on Claims

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

§ 15.1.2 Intentionally deleted.

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall~~ the Contractor, must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claim. Claims must be initiated by written notice to the Architect and the Owner.

§ 15.1.3.2 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by~~ written notice to the other party. In such event, no decision by the ~~Initial Decision Maker~~ Architect is required.

...

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in ~~Section 9.7~~ Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of any undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

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

§ 15.1.5 Claims for Additional Cost or an Increase in the Guaranteed Maximum Price

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum, Guaranteed Maximum Price, notice as provided in Section 15.1.3 shall be given ~~before proceeding to execute the portion of the Work that is the subject of the Claim.~~ to Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, or Owner's representative if provided for herein, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

.

...

§ 15.1.6.2 ~~If adverse~~ The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually inclement weather in excess of that normally experienced at the job site. Such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a Claim claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 Calculating Claims for Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.

- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- .4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision ~~1~~ Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days Claim arising prior to the date final payment is due, unless thirty days have passed after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Initial Decision Maker Architect will review Claims and within ten (10) days of the receipt of a the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum/Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Intentionally deleted. .

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~Intentionally deleted.

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~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~Waiver of Lien

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

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~~§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the parties shall jointly request the appointment of a neutral mediator by a District Judge in the county in which the Project is located.

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

~~§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~Nothing herein shall preclude the Owner or the Contractor from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

15.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, the Contractor may not bring a legal action against the Owner unless:

- .1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor's Claim, dispute or other matter, and
- .2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor's Claim, dispute or other matter.

...

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. The parties do not agree to submit any Claim or dispute to binding arbitration. Any dispute or Claim not resolved by mediation as set forth in Section 15.3 shall be resolved by litigation in a court of competent jurisdiction.~~

~~§ 15.4.1.1 Intentionally deleted.~~

~~§ 15.4.2 Intentionally deleted.~~

~~§ 15.4.3 Intentionally deleted.~~

~~§ 15.4.4 Intentionally deleted.~~

~~§ 15.4.4.1 Intentionally deleted.~~

~~§ 15.4.4.2 Intentionally deleted.~~

~~§ 15.4.4.3 Intentionally deleted.~~

~~§ 15.5 Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.~~

~~§ 15.6 In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party~~

ARTICLE 16 BUSINESS ETHICS

~~§ 16.1 During the course of pursuing contracts, and the course of Contract performance, Contractor and its Subcontractors and vendors will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any personnel of the Owner, or to family members of any of them. At any time Contractor believes there may have been a violation of this obligation, Contractor shall notify Owner of the possible violation. Owner is entitled to request a representation letter from Contractor, its Subcontractors, or vendors at any time to disclose all things of value passing from Contractor, its Subcontractors, or vendors to Owner's personnel.~~

ARTICLE 17 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

~~§ 17.1 Pursuant to Texas Government Code Chapter 2271, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.~~

~~§ 17.2 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the~~

Comptroller's list such omission or misrepresentation will void this Agreement.

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

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

§ 17.5 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 18 TEXAS GOVERNMENT CODE 552, SUBCHAPTER J

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

§ 18.2 The Contractor must:

- .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;
- .2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,
- .3 On completion of the Contract, either:
 - .1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or
 - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
- .4 The requirements of Subchapter J, Chapter 552, Government Code may apply to this Contract, and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.
- .5 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
- .6 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

This Agreement is entered into as of the final day signed by both parties below.

OWNER:
LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

CONTRACTOR:
BARTLETT COCKE GENERAL CONTRACTORS

By:
Signature

Paul Norton, Superintendent
(Printed name and title)

Date:

By:
Signature

(Printed name and title)

Date:

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 15.4.4 Consolidation or Joinder

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:36:36 ET on 10/04/2024 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

Attorney for Lake Travis ISD

(Title)

10/04/2024

(Dated)



AIA® Document A133® – 2019

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

AGREEMENT made as of the 20th day of November in the year 2024
(In words, indicate day, month, and year.)

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

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

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

Bartlett Cocke General Contractors
3330 Caseybridge Ct.
Austin, TX 78744
512-326-4223

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

HPR Elementary #8
CMR 23-02

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

Pfluger Architect
209 Riverside Dr.
Austin, TX 78704
512-476-4040

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
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10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
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15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B PREVAILING WAGE RATES

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

See Request for Proposal CMR Bid #24-004; see also Exhibit A, GMP Amendment

§ 1.1.2 The Project's physical characteristics:

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

927 student elementary school located at 16907 Hamilton Pool Road

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

Approximate Construction Budget \$40,654,017

Init.

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

- .1 Design phase milestone dates, if any: N/A
- .2 Construction commencement date: Anticipated January 6, 2025
- .3 Substantial and Final Completion date or dates: August 12, 2026
- .4 Other milestone dates: N/A

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

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

N/A

(Paragraph deleted)

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

See Request for Proposal CMR Bid #24-004; see also Exhibit A, GMP Amendment

§ 1.1.8 The Owner identifies the following representative(s) in accordance with Section 4.2:
(List name, address, and other contact information.)

Paul Norton, Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

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

Architect

§ 1.1.10 The Architect will retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Structural Engineer:
Pickett Kelm
4100 Duval Road
Austin, TX 78759
- .2 Mechanical Engineer:
MEP Engineering, Inc.
1120 South Capital of Texas HWY
Building 1, Suite 150
West Lake Hills, TX 78746
- .3 Electrical Engineer:

Init.

MEP Engineering, Inc.
1120 South Capital of Texas HWY
Building 1, Suite 150
West Lake Hills, TX 78746

.4 Civil Engineer:
Malone/Wheeler, Inc.
5113 SW Parkway, Suite 260
Austin, TX 78735

.5 Landscape
Blu Fish Collaborative, Inc.
3607 South Lamar Blvd
Austin, Texas 78704

.6 Other, if any:

Technology / Security
AI Vickers Technology Consulting
345 S. Commons Ford Rd.
Austin, TX 78733

Food Services
Casper & Associates
PO Box 275
Elmendorf, TX 78112

DAS Testing and Design
True North Consulting Group
13284 Pond Springs Rd, Suite 304
Austin, TX 78729

Roofing
Austech Roof Consultants
800 N. Lexington St.
Manor, TX 78653

The Owner shall retain the following consultants:

- .1 Geotechnical Engineer
- .2 Commissioning for HVAC

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

Jessica Molter
209 Riverside Dr.
Austin, TX 78704
(512) 476-4040
Jessica.molter@pflugerarchitects.com

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

Gabe Rodriguez
Bartlett Cocke GC

Init.

/

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

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

See Request for Proposal CMR Bid #24-004; see also Exhibit A, GMP Amendment

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

§ 2.1.2 The Board of Trustees or its designee, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute

a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Paul Norton, Superintendent, or successor.

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended, shall apply only as applicable. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

(Paragraphs deleted)

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval, which may consist of a verification that all specified requirements will be met.

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

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

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas

Government Code §§2269.255 and 2269.256 as follows: the Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

- .1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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

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

§ 3.1.11.9 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and
- .6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details

of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

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

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

(Paragraphs deleted)

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration

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

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

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

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

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

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

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

(Paragraph deleted)

§ 4.1.2 Intentionally deleted.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.

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

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

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

§ 4.2 Owner's Designated Representative

Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:
Paul Norton, Superintendent, or successor, and Robert Winovitch, Director of Construction and Facilities, or successor.

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

§ 4.3 Architect

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

§ 4.4 Inspection and Testing

Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

(Paragraph deleted)

A lump sum of FORTY-FOUR THOUSAND DOLLARS AND NO CENTS (\$44,000).

§ 5.1.2

(Paragraphs deleted)

Intentionally deleted.

(Table deleted)

§ 5.1.2.1 Intentionally deleted.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

(Paragraphs deleted)

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025, upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest in accordance with the Texas Government Code Section 2251.025. *(Paragraph deleted)*

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

A percentage fee of 2.75% of the Cost of Work.

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

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

Only as approved by the Owner's Board of Trustees.

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

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

(Paragraphs deleted)

§ 6.1.5 Liquidated damages, if any:

.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to \$1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to

achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 6.1.6 Other:

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

N/A

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 Intentionally deleted.

(Paragraphs deleted)

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

§ 6.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment

provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

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

(Paragraph deleted)

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform any portion of the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

(Paragraphs deleted)

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time attributable to and required for the Work and only as approved by Owner.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

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

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

§ 7.6 Miscellaneous Costs

(Paragraphs deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

§ 7.6.5.1 Intentionally deleted.

(Paragraphs deleted)

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

§ 7.6.7 Costs of document reproductions and delivery charges

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

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, that are directly attributable to and required for the Work and are approved by the Owner.

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Intentionally deleted;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Delay damages or claims caused by or within the control of the Contractor, even if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Owner [Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time and General Conditions]; and
- .11 Construction Manager's Fee in Section 6.1.2

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

(Paragraph deleted)

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

(Paragraphs deleted)

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

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

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.
- .5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

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

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

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

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values, less any unused Owner's contingency and unused Construction manager's contingency, shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

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

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

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

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§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion or classification of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) classification on the schedule of values.

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors, accountants, or other representatives in such documentation;
- .6 Retainage withheld pursuant to Section 11.1.8.
- .7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)
- .8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
 - .1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.
 - .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.
 - .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.
 - .4 Subtract withheld payments pursuant to Section 11.1.3.

§ 11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

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

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

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

§ 11.1.8.1.1 The following items are not subject to retainage:

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

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

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

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

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201-2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the

Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

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

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

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract including the Construction Manager's responsibility to correct Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- .3 a final Certificate for Payment has been issued by the Architect and approved by the Program Manager, if applicable;
- .4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and
- .5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

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

(Paragraphs deleted)

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

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

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of

the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

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

- .1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.
- .2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.
- .3 Add the Construction Manager's Fee.
- .4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.
- .5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.
- .6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.
- .7 Subtract all previous payments made by the Owner.
- .8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.
- .9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

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

§ 11.3 Interest

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

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

§ 12.1.2 Intentionally deleted.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, as amended, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

Intentionally deleted.

Litigation in a court of competent jurisdiction
(Paragraphs deleted)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction with proper venue being the county where the Project site is located.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

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

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

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

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

under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

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

§ 13.2.1 Termination

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

(Paragraphs deleted)

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

N/A

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

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§ 14.2 Successors and Assigns

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

§ 14.2.2 Intentionally deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1

The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than \$1,000,000 for each occurrence, combined single limit, and \$2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

- .1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:
 - .1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or
 - .2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than \$1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard overage form allowed without written consent of Owner.

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of \$10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than \$1,000,000 each accident, occurrence or disease.

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Construction Manager's employees providing services on a Project is required for the duration of the Project.

(Paragraphs deleted)

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

(Paragraph deleted)

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

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

(Paragraph deleted)

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

(Paragraph deleted)

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

(Paragraph deleted)

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

(Paragraph deleted)

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

(Paragraphs deleted)

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

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

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

- .2 Provide to the Construction Manager, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the Project;
- .3 Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4 Obtain from each other person with who it contracts, and provide to the Construction Manager:
 - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
 - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 Notify the Owner in writing by certified mail or persona delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts to perform as required by items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

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

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Owners and Contractors Protective Liability Insurance naming the Owner, Superintendent and Board of Trustees as additional insured with the following limits:

- .1 \$1,000,000 each occurrence;
- .2 \$1,000,000 aggregate as primary limits, irrespective of whether occurrence consists of bodily injury, death, property damage or combination thereof.

Covering the work to be performed for Owner by the Construction Manager and its subcontractor, if any. It will be necessary that the Construction Manager and the Subcontractor, if any, be designated in the Declarations of the policy. The definition of insured in the policy shall be endorsed to include officers, employees of the Owner, with respect to the work performed by the Construction Manager. Written with the same company as CGL policy. The Architects and Engineers shall be additional insured but only will have excess coverage. The full policy limits will protect the Owner if needed and only the excess will protect the Architects and Engineers.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

- .1 builder's risk: \$25,000;
- .2 flood: \$25,000; or
- .3 named windstorm: \$100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than \$1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

(Paragraphs deleted)

(Table deleted)

§ 14.5 Other provisions:

§ 14.5.1 Criminal History Checks

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

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

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

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

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

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

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

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

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

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

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

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

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

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

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

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

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

- .1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.
- .2 The Contractor must:
 - .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;
 - .2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,
 - .3 On completion of the Contract, either:
 - .1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or
 - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
 - .3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.
 - .4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
 - .5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents are included in the Contract, in addition to those listed in Section 1.1:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended by the parties

- .2 Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A201™–2017, General Conditions of the Contract for
(Paragraphs deleted)
- Construction, as amended by the parties
- .4 Exhibit B – Prevailing Wage Rate

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

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

BARTLETT COCKE GENERAL CONTRACTORS

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

Paul Norton, Superintendent
(Printed name and title)

(Printed name and title)

Additions and Deletions Report for **AIA® Document A133® – 2019**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:27:20 ET on 10/04/2024.

PAGE 1

AGREEMENT made as of the 20th day of November in the year 2024

...

Lake Travis ISD
3322 Ranch Road 620 S.
Austin, TX 78738
Telephone: 512-533-6000
Fax: 512-533-6001

...

Bartlett Cocke General Contractors
3330 Caseybridge Ct.
Austin, TX 78744
512-326-4223

...

HPR Elementary #8
CMR 23-02

...

Pfluger Architect
209 Riverside Dr.
Austin, TX 78704
512-476-4040

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EXHIBIT B ~~INSURANCE AND BONDS~~ PREVAILING WAGE RATES

...

See Request for Proposal CMR Bid #24-004; see also Exhibit A, GMP Amendment

...

927 student elementary school located at 16907 Hamilton Pool Road

...

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

Approximate Construction Budget \$40,654,017

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- .1 Design phase milestone dates, if any: N/A
- .2 Construction commencement date: Anticipated January 6, 2025
- .3 Substantial and Final Completion date or dates: August 12, 2026
- .4 Other milestone dates: N/A

...

N/A

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

...

See Request for Proposal CMR Bid #24-004; see also Exhibit A, GMP Amendment

~~§ 1.1.8 The Owner identifies the following representative representative(s) in accordance with Section 4.2:~~

...

Paul Norton, Superintendent
3322 Ranch Rd. 620 S.
Austin, TX 78738
512-533-6000

Robert Winovitch, Director of Construction and Facilities
16101 Hwy 71 West, Bldg B
Austin, TX 78738
512-533-5963

...

Architect

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

...

- .1 Geotechnical Structural Engineer:
Pickett Kelm
4100 Duval Road
Austin, TX 78759
- .2 Mechanical Engineer:

MEP Engineering, Inc.
1120 South Capital of Texas HWY
Building 1, Suite 150
West Lake Hills, TX 78746

.3 Electrical Engineer:
MEP Engineering, Inc.
.2-1120 South Capital of Texas HWY
Building 1, Suite 150
West Lake Hills, TX 78746

.4 Civil Engineer:
Malone/Wheeler, Inc.
5113 SW Parkway, Suite 260
Austin, TX 78735

.5 Landscape
Blu Fish Collaborative, Inc.
3607 South Lamar Blvd
Austin, Texas 78704

~~.3~~ .6 Other, if any:

Technology / Security
~~(List any other consultants retained by the Owner, such as a Project or Program Manager.)~~ Al Vickers
Technology Consulting
345 S. Commons Ford Rd.
Austin, TX 78733

Food Services
Cosper & Associates
PO Box 275
Elmendorf, TX 78112

DAS Testing and Design
True North Consulting Group
13284 Pond Springs Rd, Suite 304
Austin, TX 78729

Roofing
Austech Roof Consultants
800 N. Lexington St.
Manor, TX 78653

The Owner shall retain the following consultants:

.1 Geotechnical Engineer

.2 Commissioning for HVAC

PAGE 4

Jessica Molter
209 Riverside Dr.
Austin, TX 78704
(512) 476-4040
Jessica.molter@pflugerarchitects.com

...

Gabe Rodriguez
Bartlett Cocke GC
GRodriguez@bartlettcocke.com

PAGE 5

Construction Manager shall comply with all requirements of Tex. Gov't Code, Ch. 2269, Subchapter E.

...

See Request for Proposal CMR Bid #24-004; see also Exhibit A, GMP Amendment

...

The Contract Documents (sometimes referred to as "Contract") consist of this Agreement, as modified for the Project, including all Addenda and Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager (to the extent not inconsistent with this Agreement or the other Contract Documents), the request for proposals, and Construction Manager's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment Amendment, to the extent not inconsistent with this Agreement or the other Contract Documents (in the event of any inconsistency between the documents listed in Section 3.2.3 and this Agreement or the other Contract Documents, this Agreement and the other Contract documents, in that order, shall control over such listed documents), and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended.

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

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

§ 2.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement or anywhere else Board authorization is provided in this Agreement or by Board action.

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The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment

in furthering the interests of the ~~Owner~~ Owner; to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Owner's Board of Trustees or designee, as set forth in the Contract Documents; to furnish efficient construction administration, management services, and supervision; to furnish construction services, if allowed in accordance with law; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

...

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: ~~Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law; as amended,~~ shall apply only as applicable. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 — CONSTRUCTION MANAGER'S RESPONSIBILITIES

~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternative and potential cost

savings shall be subject to the review and approval of the Architect, Owner, and the Owner's professional consultant, if any. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by discovered by, that reasonably should have been discovered by, or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project and exchange of digital data.~~

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing.

§ 3.1.3.5 Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with existing systems, if such conflicts should have been discovered during the Construction Documents Phase by the Construction Manager through the exercise of reasonable diligence, and the Owner and Architect were not informed of such conflicts as required by subparagraph 2.1.2.1. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

...

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

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and

procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price when all elements of the Drawings and Specifications are at least ninety percent (90%) complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective ~~action~~ action, and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

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

...

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and ~~approval~~ approval, which may consist of a verification that all specified requirements will be met.

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

...

§ 3.1.11.4 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows: the Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or Subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.

§ 3.1.11.5 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall be submitted to the Owner no

later than 24 hours prior to the deadline for subcontractors to submit competitive sealed proposals for the Guaranteed Maximum Price. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer or Owner. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work. Pursuant to Texas Government Code Chapter 2269, Subchapter F, if during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from a subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

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

- .1 The successful proposer's responsibility to provide worker's compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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

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

§ 3.1.11.9 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

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the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's ~~Fee described in Section 6.1.2.Fee.~~ If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

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

and reasonably inferable therefrom. ~~Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.~~

...

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2; to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Owner's Contingency; general conditions, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; ~~and~~
- .5 ~~A date by which the Owner must accept the Guaranteed Maximum Price. The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall not be more than sixty (60) after the date of Substantial Completion; and~~
- .6 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum price basis.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Guaranteed Maximum Price will contain a separately-identified contingency amount (the "Construction Contingency"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include a separately-identified contingency amount, an "Owner's Contingency," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price, the Architect will prepare the Amendment forms and return them to the Construction Manager for review, signature, and return to the Owner.

§ 3.2.6 ~~If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. The Owner's Board of Trustees shall be allowed not less than thirty (30) days after receipt of the Construction Manager's signed~~

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

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

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§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. any taxes from which Owner is exempt.

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

...

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

Phase, as provided in Section 8.1.2 of A201-2017.

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

§ 3.3.2 Administration

§ 3.3.2.1 ~~The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.~~

§ 3.3.2.2 ~~Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017.~~

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

~~The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.~~

§ 3.3.2.5 Cost Control

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

§ 3.3.1.2 Intentionally deleted.

§3.3.2 Administration

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

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

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

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

§ 3.3.2.1.2 Nothing herein shall preclude the Construction Manager from including other notice required or allowed by law. The Construction Manager shall schedule and conduct weekly or otherwise regularly-scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment by the Owner and Construction Manager, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201-2017, including the Owner's occupancy requirements.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

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

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

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

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

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

~~**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~

~~**§ 4.1.2** Intentionally deleted.~~

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs—costs including the Owner's Contingency as provided in Section 3.2.4. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

...

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

§ 4.1.4.2 The Owner shall furnish surveys ~~describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark as provided in Section 2.3.4 of AIA 201-2017, General Conditions, as amended by the parties.~~

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

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

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~~The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within the Owner's contingency. The Board designates as its authorized representatives, the following individuals:~~

~~Paul Norton, Superintendent, or successor, and Robert Winovitch, Director of Construction and Facilities, or successor.~~

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

...

~~The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Construction Manager's services shall be provided in conjunction with the services of an Architect. The terms of the agreement between the Owner and Architect shall be available for inspection by the Construction Manager upon request.~~

§ 4.4 Inspection and Testing

Owner shall provide the Construction Manager with ~~a copy of the scope of services in the executed~~ executed agreement between the Owner and the Architect, and any further modifications to ~~the Architect's scope of services in the agreement.~~ the agreement. Pursuant to Texas Government Code §2269.058, the Owner shall provide or contract for, independently of the Construction Manager, construction materials engineering, and testing and inspection services necessary for acceptance of the Work by Owner.

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

A lump sum of FORTY-FOUR THOUSAND DOLLARS AND NO CENTS (\$44,000).

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Intentionally deleted.

Individual or Position

Rate

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

...
§ 5.2 Payments

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager within 45 days of the Construction Manager's invoice and Certification for Payment from the Architect. Undisputed amounts unpaid more than 45 days after the invoice receipt from the Architect shall bear interest in accordance with the Texas Government Code Section 2251.025. upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date sh
(Insert rate of monthly or annual interest agreed upon.)

—%

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

...
A percentage fee of 2.75% of the Cost of Work.

The fee shall be calculated as a percentage of the Cost of the Work, and not as a percentage of the Contract Sum.

No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or as provided in Section 2.3.2.1.

...

Only as approved by the Owner's Board of Trustees.

...

See A201-2017, General Conditions, Section 7.1.4, as amended by the parties.

~~§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed _____ percent (____%) of the standard rental rate paid at the place of the Project.~~

~~§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)~~

~~§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)~~

~~§ 6.2 Guaranteed Maximum Price~~

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

~~§ 6.3 Changes in the Work~~

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

~~§ 6.1.5 Liquidated damages, if any:~~

~~.1 _____ Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Construction Manager to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Construction Manager if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.~~

~~.2 _____ It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement~~

that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to \$1,000 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 60 days of the designated or extended date of Substantial Completion. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$500 per day. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

.4 Such damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 6.1.6 Other:

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

N/A

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

§ 6.3.1 The Owner with Board of Trustees' approval, if appropriate, may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. Either the Construction Manager or Owner, as appropriate, shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

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

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

~~§ 6.3.5~~ If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 — COST OF THE WORK FOR CONSTRUCTION PHASE

~~§ 7.1 Costs to Be Reimbursed~~

~~§ 7.1.1~~ The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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

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

~~§ 6.3.3~~ In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201-2017 shall have the meanings assigned to them in AIA Document A201-2017, as amended by the parties, and shall not be modified by Sections 6.1 and 6.2, Sections 7.1 through 7.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

~~§ 6.3.5~~ If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee may be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean direct, actual, and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written approval, the Construction Manager shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 7.2 Labor Costs

§ 7.2 Labor Costs

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

approval, at off-site workshops, to the extent allowed by Texas Government Code Sections 2269.255 or 2269.275, and only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

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

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

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

~~§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.~~

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

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time attributable to and required for the Work and only as approved by Owner.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly attributable to and required for the Work and as approved by Owner.

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

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

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Section 3.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under this Section. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement.

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

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

...

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

~~§ 7.6.1.1 Costs for self insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.~~

~~§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.~~

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

~~§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.~~

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

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, including any subcontractor default insurance (SDI) purchased at the discretion of the Construction Manager and directly attributable to this Contract.

§ 7.6.1.1 Intentionally deleted.

§ 7.6.1.2 Intentionally deleted.

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

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

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

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction

~~Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager’s Fee or subject to the Guaranteed Maximum Price.~~Intentionally deleted.

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

~~§ 7.6.7 Costs of document reproductions and delivery charges.~~

~~§ 7.6.8 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.~~

~~§ 7.6.9 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.~~

~~§ 7.6.10 Expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work, with the Owner’s prior approval.~~

~~§ 7.6.11 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

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

§ 7.6.7 Costs of document reproductions and delivery charges

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

§ 7.6.9 Intentionally deleted.

§ 7.6.10 Intentionally deleted.

§ 7.6.11 Intentionally deleted.

~~§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner’s prior approval, that are directly attributable to and required for the Work and are approved by the Owner.~~

~~§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.~~A201–2017, as amended.
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Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9-7.9, or other provision of or amendment to this Agreement. However, notwithstanding anything in Article 7 to the contrary.

...

~~§ 7.8.2~~ § 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the ~~Owner~~Owner, in writing, of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall

procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

...

- .2 ~~Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;~~Intentionally deleted;

...

- .6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;

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- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .9 Costs for services incurred during the Preconstruction ~~Phase~~Phase;
- ~~.10 Delay damages or claims caused by or within the control of the Contractor, even if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Owner [Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time and General Conditions]; and~~
- ~~.11 Construction Manager's Fee in Section 6.1.2~~

...

~~§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, and equipment connected with the Work, and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Owner.. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.~~

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

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

...

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

ARTICLE 10 — ACCOUNTING RECORDS

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

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

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

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.
- .5 The following shall be included in any information to proposers, Request for Proposals, or Bid Documents:

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

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

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

another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.7 Per Texas Government Code Section 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with Section 3.3.2.1 and Section 6.2.1 herein.

ARTICLE 10 ACCOUNTING RECORDS

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

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§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.) The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 or another acceptable form for approval. Continuation sheets shall be submitted on AIA Form G703 or another acceptable form. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager, if applicable, may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. The Owner shall have the right to withhold from payments due Construction Manager such sums as are necessary to protect Owner against any loss or damage which may result from negligence by Construction Manager or failure of Construction Manager to perform Construction Manager's obligations under this Contract. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within (30) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of ~~values-values, less any unused Owner's contingency and unused Construction manager's contingency,~~ shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee. The Construction Manager's fee shall be shown as a separate line item on the schedule of values.

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

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

...

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion or classification of the Work by the share of the Guaranteed Maximum Price allocated to that portion or classification of the Work in the most recent schedule of values;

...

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditors-auditors, accountants, or other representatives~~ in such documentation; ~~and~~
- .6 Retainage withheld pursuant to Section 11.1.8.
- .7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code Section 2252.032.)
- .8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
 - .1 If Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201- 2017, as amended.
 - .2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.
 - .3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.
 - .4 Subtract withheld payments pursuant to Section 11.1.3.

§ 11.1.7.3 Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Construction Manager of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

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

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

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§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)~~due. Retainage is managed in conformance with Texas Government Code Chapter 2252, subchapter B:

Five (5%) percent

...

Any items legally required pursuant to Tex. Gov't Code, Chapter 2252, Subchapter B to be excluded.

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

...

N/A

...

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017. Construction Manager Shall submit a claim in accordance with Article 15 of AIA Document A201-2017, as amended.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. If the Construction Manager wishes to bill for materials or equipment which cannot be stored on site, the Construction Manager shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Construction Manager shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored

is bonded. Security and protection from theft and damage remains on the Construction Manager as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Construction Manager from meeting the schedule unless the Owner agrees to such delay in writing in advance of notification to the Owner of any delay.

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

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

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§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, for each Work, if multiple Project(s), shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for Contract including the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, Work, and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment, and Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representatives;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2 and approved by the Program Manager, if applicable;
- .4 The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents. The certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized; and
- .5 Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017, as amended; and

§ 11.2.2 Within 30-60 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

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

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

—%

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

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

§ 11.2.2.3 If the Owner's auditors', or other representatives' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 12 without a further decision of the Architect. Unless otherwise agreed in the Contract Documents, a demand for mediation or other dispute resolution as provided in the Contract Documents, of the disputed amount shall be made by the Construction Manager within the timeline established in Section 15.2 of A201-2017 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors or other representatives becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 31 days after the Architect's execution of a final Certificate for Payment. The Construction Manager must certify completion of all Work, including all listed in Section 9.10.2 of the AIA Document A 201-2017 for the Project, cleanup, and delivery of record documents prior to or with the Application for Final Payment.

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

- .1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.
- .2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.
- .3 Add the Construction Manager's Fee.
- .4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.
- .5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.
- .6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.
- .7 Subtract all previous payments made by the Owner.
- .8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.
- .9 If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

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

§ 11.3 Interest

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

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§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. Intentionally deleted.

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

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

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

...

Arbitration pursuant to Article 15 of AIA Document A201-2017 ~~Intentionally deleted.~~

Litigation in a court of competent jurisdiction

Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction. ~~jurisdiction with proper venue being the county where the Project site is located.~~

...

§ 13.1

~~Termination Prior to Execution of the Guaranteed Maximum Price Amendment~~ **Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

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

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's ~~Manager's~~ compensation under this Section exceed the compensation set forth in ~~Section 5.1.~~ Section 5.1.

...

forth in ~~Section 5.1.~~ Section 5.1.

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§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

...

§ 13.2.2 Termination by the Owner for Cause

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

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

§ 13.2.2 Termination by the Owner for Cause

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

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

...

N/A

...

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

...

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

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legal representatives to covenants, agreements, and obligations contained in the Contract Documents. ~~Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party~~ The Construction Manager shall not assign this Agreement or the Contract in whole or in part without the prior written consent of the Owner's Board of Trustee. If Construction Manager attempts to make such an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 ~~The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.~~

§ 14.2.2 Intentionally deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1

The Construction Manager shall purchase and maintain insurance as required by this Section 14.3 and Article 11, A201-2017 as amended for this Project, to protect Construction Manager and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2017 Section 11.1.2.1.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than \$1,000,000 for each occurrence, combined single limit, and \$2,000,000 in the aggregate for bodily injury and property damage, including coverage for contractual liability, personal injury, independent contractors, explosion, collapse and underground, broad form property damage, product liability, and completed operations.

.1 Without limiting the forgoing, such policy/ies shall include within its/their scope coverage for claims including, but not limited to:

.1 Damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Construction Manager's employers, or

.2 Damages arising from personal or advertising injury applicable to the Construction Manager's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Construction Manager and subcontractors.

§ 14.3.1.2 Automobile Liability covering vehicles owned, non-owned, hired, or any other vehicles used, by the Construction Manager with policy limits of not less than \$1,000,000 per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. No deletions/exclusions from standard coverage form allowed without written consent of Owner.

§ 14.3.1.3 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Umbrella Excess Liability coverage (occurrence basis) of \$10,000,000 excess of the underlying limits of the commercial general liability insurance. The Owner shall be named as an additional insured on the policy as to the Project.

§ 14.3.1.5 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than \$1,000,000 each accident, occurrence or disease.

§ 14.3.1.5.1 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory worker's compensation insurance coverage for the Construction Manager's employees providing services on a Project is required for the duration of the Project.

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.2.5.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to

perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operations, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than —(\$ —) for each occurrence and —(\$ —) in the aggregate for bodily injury and property damage.

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

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

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

§ 14.3.1.5.1.6 The Construction Manager must provide a certificate of coverage to the Owner prior to being awarded the Contract.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.5.1.7 If the coverage period shown on the Construction Manager current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

§ 14.3.1.5.1.8 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than —(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit.

§ 14.3.1.5.1.9 The Construction Manager shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

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

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

§ 14.3.1.6 Other Insurance

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

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

§ 14.3.1.5.1.12 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the stator requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
- .2 Provide to the Construction Manager, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project for the duration of the Project;
- .3 Provide the Construction Manager, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4 Obtain from each other person with who it contracts, and provide to the Construction Manager:
 - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
 - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- .6 Notify the Owner in writing by certified mail or persona delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts to perform as required by items 1 - 6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

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

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

28 TAC Section 110.110(i).

§ 14.3.1.6 Owners and Contractors Protective Liability Insurance naming the Owner, Superintendent and Board of Trustees as additional insured with the following limits:

- .1 \$1,000,000 each occurrence;
- .2 \$1,000,000 aggregate as primary limits, irrespective of whether occurrence consists of bodily injury, death, property damage or combination thereof.

Covering the work to be performed for Owner by the Construction Manager and its subcontractor, if any. It will be necessary that the Construction Manager and the Subcontractor, if any, be designated in the Declarations of the policy. The definition of insured in the policy shall be endorsed to include officers, employees of the Owner, with respect to the work performed by the Construction Manager. Written with the same company as CGL policy. The Architects and Engineers shall be additional insured but only will have excess coverage. The full policy limits will protect the Owner if needed and only the excess will protect the Architects and Engineers.

§ 14.3.1.7 Builder's Risk / All-Risk: "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the Guaranteed Maximum Price, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, wind storm, hurricane, hail, explosion, riot, civil commotion, sprinkler leakage, civil authority, sonic boom, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Construction Manager, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss up to 5% of construction values. If this policy excludes Employee Theft or Dishonesty coverage, including third parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. For any claim made against the builder's risk/all risk insurance, the deductible shall not exceed the following:

- .1 builder's risk: \$25,000;
- .2 flood: \$25,000; or
- .3 named windstorm: \$100,000.

§ 14.3.1.8 Fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until Final Completion.

§ 14.3.1.9 Coverage for debris removal, with limits not less than \$1,000,000.

§ 14.3.1.10 Pollution liability insurance. If the work involves the transport, dissemination, use or release of pollutants, the Construction Manager shall procure Pollution Liability Insurance, with policy limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.

§ 14.3.2 Intentionally deleted.

§ 14.3.2.1 Intentionally deleted.

§ 14.4 Intentionally deleted.

Coverage

Limits

~~§ 14.3.1.7 Additional Insured Obligations.~~ To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

~~§ 14.3.2 Construction Phase~~

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™ 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~

~~§ 14.3.2.1~~ The Construction Manager shall provide bonds as set forth in AIA Document A133™ 2019 Exhibit B, and elsewhere in the Contract Documents.

~~§ 14.4~~ Notice in electronic format, pursuant to Article 1 of AIA Document A201 2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5.1 Criminal History Checks

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

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

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

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

§ 14.5.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

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

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

§ 14.5.8 By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

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

§ 14.5.11 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 14.5.12 Contractor verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

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

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

§ 14.5.15 The Construction Documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor, Subcontractors, Sub-subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work,

without the specific written consent of the Owner or the Architect, as appropriate. The Contractor, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

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

§ 14.5.17 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 14.5.18 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property to refrain from the use of tobacco products, drinking alcoholic beverages, carrying weapons, speaking profane and/or offensive language, or engaging in any interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of the Project, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.

§ 14.5.19 Contractor shall provide Owner with one black and blue hardcopy set and one electronic copy of final marked-up "as built" drawings of each job site in the Project. Any CAD files will be the responsibility of the Architect. Electronic files by the Construction manager will be in a .PDF format.

§ 14.5.20 All sums due hereunder are payable in Travis County, Texas.

§ 14.5.21 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

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

§ 14.5.23 Even if the Work is otherwise in compliance with the Schedule, Owner may, at any time, unilaterally direct Construction Manager to accelerate the Work, by among other things, establishing additional shifts, paying or authorizing overtime or providing additional equipment. In this event, Owner's sole liability to Construction Manager shall be to pay any shift differential, premium, or overtime payments to workers of field supervisors and any additionally required Overhead and Supervision along with the general requirements and any legitimate acceleration surcharges actually incurred over and above Construction Manager's normal times, amounts to account for lost efficiency of workers, and overtime charges for equipment. Any adjustment to the Guaranteed Maximum Price must be approved by Owner's Board of Trustees in the manner provided in the Contract.

14.6 TEXAS GOVERNMENT CODE § 552 SUBCHAPTER J

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

.2 The Contractor must:

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

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

.3 On completion of the Contract, either:

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

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

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

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

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

14.7 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. Contractor voluntarily and knowingly acknowledges and agrees that the Contract shall be null and void should facts arise leading the District to believe that the Contractor is an abortion provider or affiliate of an abortion provider that the District is prohibited from entering into a transition with under the law.

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

§ 15.2 The following documents comprise the Agreement: are included in the Contract, in addition to those listed in Section 1.1:

.1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price Price, as amended by the parties

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™-2017, General Conditions of the Contract for Construction

.5 Building Information Modeling Exhibit, if completed:

.6 Other Exhibits:

(Check all boxes that apply.)

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

— Supplementary and other Conditions of the Contract:

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

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LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT

BARTLETT COCKE GENERAL CONTRACTORS

...

Paul Norton, Superintendent

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Amber King, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:27:20 ET on 10/04/2024 under Order No. 4104251289 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

Attorney for Lake Travis ISD

(Title)

10/04/2024

(Dated)



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Board Notification under Board Policy CH (LOCAL) – District Fleet Vehicles

RECOMMENDED ACTION

For Presentation/Discussion Only.

RATIONALE

The Board delegates to the Superintendent or designee the authority to make budgeted purchases for goods or services. However, any single, budgeted purchase of goods or services that costs \$100,000 or more, regardless of whether the goods or services are competitively purchased, shall require Board approval before a transaction may take place. The Superintendent shall not be required to obtain Board approval for the following types of budgeted purchases that cost \$100,000 or more, but shall subsequently report them to the Board:

1. A purchase made pursuant to a Board-approved interlocal contract, in accordance with law.
2. A purchase made through a cooperative purchasing program, in accordance with law.
3. A purchase made through a state purchasing program that satisfies the District’s obligation for competitive purchasing;
4. A purchase for produce or fuel.

Lake Travis ISD has a budgeted purchase that requires Board notification for five 2025 Chevy Suburbans in the amount of \$326,225. The vehicles will be added to the District’s fleet inventory and used to cover the growth in student program and staff transportation needs.

BUDGET PROVISIONS

2023 Bond Program - \$326,225

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Brad Goerke – Director of Finance

Cristy Soares – Director of Purchasing

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Discussion of Intruder Detection Audit Report Findings

RECOMMENDED ACTION

For Presentation/Discussion only.

RATIONALE

The top priority of Lake Travis Independent School District and the State of Texas is keeping students and staff safe every day. The Texas Education Agency recently conducted an Intruder Detection Audit at one or more of our campuses. The audits test whether a campus is accessible to an unauthorized individual. This audit seeks to help districts identify how campuses can improve safety for students, such as ensuring exterior doors are locked and provides an opportunity to create a safer learning environment for our students and staff.

We are working closely with our School Safety & Security Committee to ensure that we are training all our staff and securing our doors for the protection of everyone on our campuses. The support from the state in conducting the Intruder Detection Audits is just one of the many actions we are taking to ensure our schools are safe. We know that this work does not end, and we appreciate the Board's support.

We acknowledge that parents and community members are interested in the details of the audit results; however, it is in the best interest of the students that we do not share this information to the broader public as it could lead to compromising important campus security information. Specific details of the Intruder Detection Audit will be discussed in the executive session and with the Safety and Security Committee. Lake Travis ISD is committed to providing a safe and secure learning environment for our students and staff.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Andy Michael – Chief of Police, LTISD

ATTACHMENTS

None

MEETING DATE

October 16, 2024



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-03 Determining that Certain Property Containing 0.8579 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings

RECOMMENDED ACTION

Approve Resolution No. 101624-03 Determining that Certain Property Containing 0.8579 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings.

RATIONALE

The Board has previously found and determined that public convenience and necessity require the acquisition of certain real property owned by JPH Capital Ltd. for the construction of a school facility. The Board has already authorized the Superintendent, or his designee, to make an offer to the owner for the acquisition based on its appraised value. The Superintendent and his designees are continuing their attempts to negotiate with the owner for the purchase of the property and/or property rights as applicable. However, in the event the District cannot successfully negotiate the acquisition based on the appraised value, the District will need to exercise its right to acquire the property through eminent domain. This resolution provides the District the authority to take such action in the event direct negotiations with the landowner are not successful.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services

ATTACHMENTS

Resolution No. 101642-03

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-03

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT DETERMINING THAT CERTAIN PROPERTY CONTAINING APPROXIMATELY 0.8579 ACRES OF LAND IS NEEDED FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A PUBLIC SCHOOL AND AUTHORIZING THE INSTITUTION OF EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has found a public use and necessity for the acquisition of certain property, as stated herein and for the purposes stated herein; and

WHEREAS, due to the growing population within Lake Travis Independent School District and in order to meet the needs of this population and to fulfill the District's obligation to provide public education as mandated by Chapter 11 of the Texas Education Code, the Board of Trustees has found and determined that it is necessary to construct additional public school improvements within the District; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of real property in the tract(s) of land herein described to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of the Lake Travis Independent School District has found and determined that the acquisition of real estate to construct additional public-school improvements will serve the public purpose of promoting public education; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value;

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the

property for the purchase of the property for the purpose stated herein; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District that, should the Superintendent, or his designees, be unable to purchase from the landowner(s) of the property herein described, the Superintendent, acting through his staff or other authorized designee, is hereby authorized to bring eminent domain proceedings on behalf of the Lake Travis Independent School District under applicable provisions of law, whether provided by Section 11.155 of the Texas Education Code, as amended, Chapter 21 of the Texas Property Code, or by any other provision of law, against the owner or owners of the property, to-wit:

JPH Capital, Ltd., a Texas limited partnership and any other party who may own an interest in the Property.

Said owners being the owners of the property described in the attached Exhibit A, incorporated herein for all purposes.

Adopted this ____ day of _____, 2024 by the Board of Trustees of the Lake Travis Independent School District.

Erin Archer, Board President

Keely Cano, Board Secretary

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.8579 ACRE (37,372 SQUARE FEET) OUT OF THE WILLIAM McINTIRE SURVEY NO. 91, ABSTRACT NO. 533, IN TRAVIS COUNTY, TEXAS, BEING ALL OF A CALLED 0.859 ACRE TRACT (DESCRIBED AS "TRACT 3") CONVEYED TO JPH CAPITAL, LTD. IN DOCUMENT NO. 2004153390 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID 0.8579 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies) for the southeast corner and **POINT OF BEGINNING** hereof, said point being the southeast corner of said 0.859 acre tract, and being the southwest corner of a called 4.51 acre tract conveyed to Susu Realty, Inc. in Document No. 2015054557 (O.P.R.T.C.T.);

THENCE, with the north right-of-way line of said FM 3238 and with the south line of said 0.859 acre tract, **N78°21'33"W**, a distance of **73.22** feet to a 1/2-inch iron rod with "JE Garon 4803" cap found for the southwest corner hereof, said point being the southwest corner of said 0.859 acre tract, also being the southeast corner of a called 14.6253 acre tract conveyed to Lake Travis Independent School District in Document No. 2023104354 (O.P.R.T.C.T.), from which a 1/2-inch iron rod found in the north right-of-way line of said FM 3238, being in the south line of said 14.6253 acre tract, bears, **N78°21'33"W**, a distance of 453.94 feet;

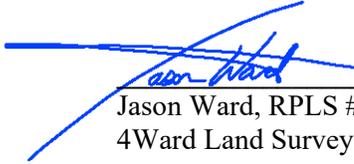
THENCE, leaving the north right-of-way line of said FM 3238, with the common line of said 0.859 acre tract and said 14.6253 acre tract, **N29°08'09"E**, a distance of **545.51** feet to a 1/2-inch iron rod with "JE Garon 4803" cap found for the northwest corner hereof, said point being the common north corner of said 0.859 acre tract and said 14.6253 acre tract, also being in the south line of Lot 92, Block N, Provence Phase 1, Section 6A, a subdivision recorded in Document No. 202300054 (O.P.R.T.C.T.), from which a 1/2-inch iron pipe found for an angle point in the common line of said 14.6253 acre tract and said Lot 92, bears, **N60°48'37"W**, a distance of 124.97 feet;

THENCE, with the common line of said 0.859 acre tract and said Lot 92, **S60°52'57"E**, a distance of **70.01** feet to a 1/2-inch iron rod found for the northeast corner hereof, said point being the common east corner of said 0.859 acre tract and said Lot 92, also being the southwest corner of Lot 1, Block N, Provence Phase 1, Section 1, a subdivision recorded in Document No. 201900014 (O.P.R.T.C.T.), also being the northwest corner of said 4.51 acre tract;

THENCE, with the common line of said 0.859 acre tract and said 4.51 acre tract, **S29°09'20"W**, a distance of **523.52** feet to the **POINT OF BEGINNING** and containing 0.8579 Acre (37,372 Square Feet) more or less.

Notes:

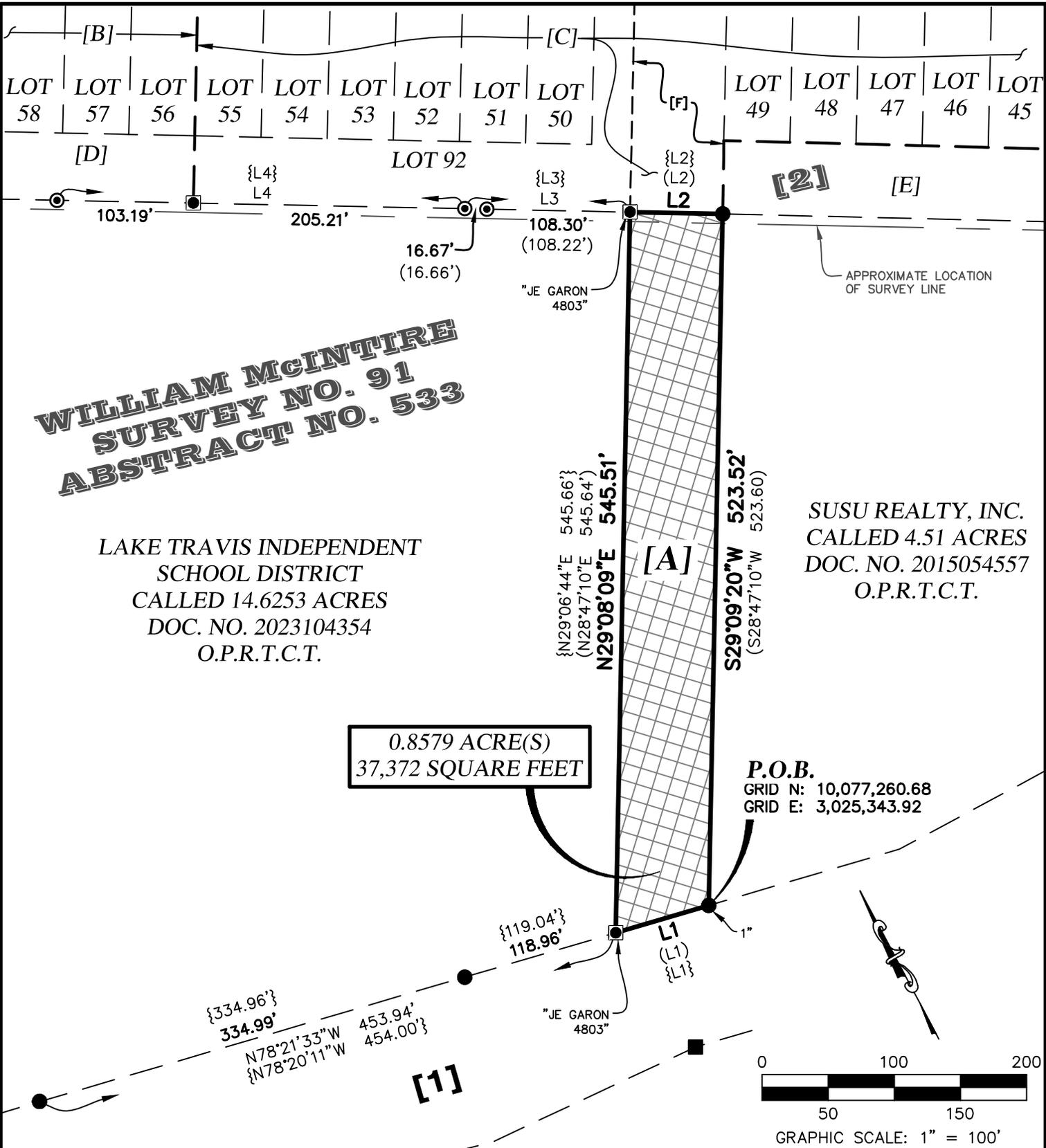
All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_70-FT LA.dwg.)



3/28/2024

Jason Ward, RPLS #5811
4Ward Land Surveying, LLC





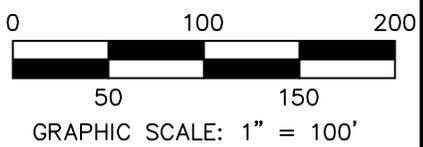
**WILLIAM McINTIRE
SURVEY NO. 91
ABSTRACT NO. 533**

LAKE TRAVIS INDEPENDENT
SCHOOL DISTRICT
CALLED 14.6253 ACRES
DOC. NO. 2023104354
O.P.R.T.C.T.

SUSU REALTY, INC.
CALLED 4.51 ACRES
DOC. NO. 2015054557
O.P.R.T.C.T.

**0.8579 ACRE(S)
37,372 SQUARE FEET**

P.O.B.
GRID N: 10,077,260.68
GRID E: 3,025,343.92



**EXHIBIT FOR
0.8579 ACRES
City of Austin,
Travis County, Texas**

4WARD
Land Surveying
A Limited Liability Company

289
PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	3/28/2024
Project:	01707
Scale:	1" = 100'
Reviewer:	DV
Tech:	TE
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N78°21'33"W	73.22'
L2	S60°52'57"E	70.01'
L3	N60°48'37"W	124.97'
L4	N60°48'37"W	308.40'

RECORD LINE TABLE		
LINE #	DIRECTION	LENGTH
{L1}	N78°20'11"W	73.21'
(L1)	N78°41'54"W	73.39'
{L2}	S60°44'40"E	70.00'
(L2)	S61°13'23"E	70.00'
{L3}	N60°53'16"W	124.88'
{L4}	N60°49'52"W	308.40'

LEGEND	
	PROPERTY LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON ROD FOUND (UNLESS NOTED)
	1/2" IRON PIPE FOUND (UNLESS NOTED)
	IRON ROD WITH "LSI" CAP FOUND (UNLESS NOTED)
	TXDOT TYPE I CONCRETE MONUMENT FOUND (UNLESS NOTED)
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
P.O.B.	POINT OF BEGINNING
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
(.....)	RECORD INFORMATION PER SUBJECT DEEDS
{.....}	RECORD INFORMATION PER ADJOINING DEEDS/PLAT

[A]
JPH CAPITAL, LTD
CALLED 0.859 ACRES
("TRACT 3")
DOC. NO. 2004153390
O.P.R.T.C.T.

[B]
PROVENCE PHASE 1
SECTION 6B
DOC. NO. 202300043
O.P.R.T.C.T.

[C]
BLOCK N
PROVENCE PHASE 1
SECTION 6A
DOC. NO. 202300054
O.P.R.T.C.T.

[D]
LOT 91
OPEN SPACE
DRAINAGE &
WATER QUALITY
EASEMENT

[E]
LOT 1, BLOCK N
PROVENCE PHASE 1
SECTION 1
DOC. NO. 201900014
O.P.R.T.C.T.

[F]
70' EMERGENCY
ACCESS EASEMENT
DOC. NO.
2023019111
O.P.R.T.C.T.



3/28/2024

[1]
FM 3238 (AKA HAMILTON
POOL ROAD,
R.O.W. VARIES)

[2]
JOHN KELLER
SURVEY NO. 25
ABSTRACT
NO. 2169

NOTES:

- ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.
- SEE ATTACHED METES AND BOUNDS DESCRIPTION.

EXHIBIT FOR
0.8579 ACRES
City of Austin,
Travis County, Texas

 4WARD Land Surveying <i>A Limited Liability Company</i>	Date:	3/28/2024
	Project:	01707
	Scale:	N/A
	Reviewer:	DV
	Tech:	TE
	Field Crew:	SV/JJ
	Survey Date:	JUL. 2023
Sheet:	2 OF 2	

290
 PO Box 90876, Austin Texas 78709
 INFO@4WARDLS.COM (512) 537-2384
 TBPELS FIRM #10174300



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-04 Determining that Certain Property Containing 0.4145 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings

RECOMMENDED ACTION

Approve Resolution No. 101624-04 Determining that Certain Property Containing 0.4145 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings.

RATIONALE

The Board has previously found and determined that public convenience and necessity require the acquisition of certain real property owned by Masonwood HP, Ltd. for the construction of a school facility. The Board has already authorized the Superintendent, or his designee, to make an offer to the owner for the acquisition based on its appraised value. The Superintendent and his designees are continuing their attempts to negotiate with the owner for the purchase of the property and/or property rights as applicable. However, in the event the District cannot successfully negotiate the acquisition based on the appraised value, the District will need to exercise its right to acquire the property through eminent domain. This resolution provides the District the authority to take such action in the event direct negotiations with the landowner are not successful.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services

ATTACHMENTS

Resolution No. 101642-04

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-04

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT DETERMINING THAT CERTAIN PROPERTY CONTAINING APPROXIMATELY 0.4145 ACRE OF LAND IS NEEDED FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A PUBLIC SCHOOL AND AUTHORIZING THE INSTITUTION OF EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has found a public use and necessity for the acquisition of certain property, as stated herein and for the purposes stated herein; and

WHEREAS, due to the growing population within Lake Travis Independent School District and in order to meet the needs of this population and to fulfill the District's obligation to provide public education as mandated by Chapter 11 of the Texas Education Code, the Board of Trustees has found and determined that it is necessary to construct additional public school improvements within the District; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of real property in the tract(s) of land herein described to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of the Lake Travis Independent School District has found and determined that the acquisition of real estate to construct additional public-school improvements will serve the public purpose of promoting public education; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the

property for the purchase of the property for the purpose stated herein; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District that, should the Superintendent, or his designees, be unable to purchase from the landowner(s) of the property herein described, the Superintendent, acting through his staff or other authorized designee, is hereby authorized to bring eminent domain proceedings on behalf of the Lake Travis Independent School District under applicable provisions of law, whether provided by Section 11.155 of the Texas Education Code, as amended, Chapter 21 of the Texas Property Code, or by any other provision of law, against the owner or owners of the property, to-wit:

MASONWOOD HP, LTD., a Texas limited partnership and any other party who may own an interest in the Property.

Said owner or owners being the owners of the property described in the attached Exhibit A, incorporated herein for all purposes.

Adopted this ____ day of _____, 2024 by the Board of Trustees of the Lake Travis Independent School District.

Erin Archer, Board President

Keely Cano, Board Secretary

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.4145 ACRE (18,055 SQUARE FEET) OUT OF THE JOHN KELLER SURVEY NO. 25, ABSTRACT NO. 2169, IN TRAVIS COUNTY, TEXAS, BEING ALL OF LOT 93, BEING ALL OF LOT 94, AND BEING A PORTION OF LOT 92A, ALL OF REPLAT OF LOT 92, BLOCK N, PROVENCE PHASE 1 SECTION 6A, A SUBDIVISION RECORDED IN DOCUMENT NO. 202400058 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID LOT 93, SAID LOT 94, AND SAID LOT 92A HAVING BEEN CONVEYED TO MASONWOOD HP, LTD. IN DOCUMENT NO. 2017038374 (O.P.R.T.C.T.), SAID 0.4145 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod with "LSI" cap found in the south right-of-way line of Grenadier Drive (50' right-of-way), being the northeast corner of said Lot 94, being the northwest corner of Lot 49 of Block N, Provence Phase 1, Section 6A, a subdivision recorded in Document No. 202300054 (O.P.R.T.C.T), for the northeast corner and **POINT OF BEGINNING** hereof, from which a 1/2-inch iron rod with "LSI" cap found for a point of curvature in the south right-of-way line of said Grenadier Drive, being in the north line of said Lot 49, bears, S60°45'51"E, a distance of 19.96 feet;

THENCE, leaving the south right-of-way line of said Grenadier Drive, with the common line of said Lot 94 and said Lot 49, **S29°13'00"W**, a distance of **125.00** feet to a 1/2-inch iron rod with "LSI" cap found for a point of curvature hereof, said point being the southwest corner of said Lot 49, also being an external ell-corner in the west line of Lot 1, Block N, Provence Phase 1, Section 1, a subdivision recorded in Document No. 201900014 (O.P.R.T.C.T.);

THENCE, in part with the east line of said Lot 94, in part with the east line of said Lot 92A, and with the west line of said Lot 1, the following two (2) courses and distances:

- 1) Along a curve to the right, whose radius is **335.00** feet, whose arc length is **12.02** feet, and whose chord bears, **S28°18'10"W**, a distance of **12.02** feet to a calculated point for a point of tangency hereof, and
- 2) **S29°19'56"W**, a distance of **43.44** feet to a 1/2-inch iron rod found for the southeast corner hereof, said point being the southeast corner of said Lot 92A, being the southwest corner of said Lot 1, being the northwest corner of a called 4.51 acre tract conveyed to Susu Realty, Inc. in Document No. 2015054557 (O.P.R.T.C.T.), and being the northeast corner of a called 0.859 acre tract (described as "Tract 3") conveyed to JPH Capital, Ltd. in Document No. 2004153390 (O.P.R.T.C.T.);

THENCE, with the common line of said Lot 92A and said 0.859 acre tract, **N60°52'57"W**, a distance of **70.01** feet to a 1/2-inch iron rod with "JE Garon 4803" cap found for an angle point hereof, said point being the northwest corner of said 0.859 acre tract, and being the northeast corner of a called 14.6253 acre tract conveyed to Lake Travis Independent School District in Document No. 2023104354 (O.P.R.T.C.T.);

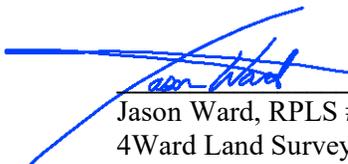
THENCE, with the common line of said Lot 92A and said 14.6253 acre tract, **N60°48'37"W**, a distance of **29.99** feet to a calculated point for the southwest corner hereof, from which a 1/2-inch iron pipe found for an angle point in the common line of said Lot 92A and said 14.6253 acre tract bears, N60°48'37"W, a distance of 94.98 feet;

THENCE, in part over and across said Lot 92A, in part with the west line of said Lot 93, and in part with the east line of Lot 50 of said Block N, Provence Phase 1, Section 6A, **N29°10'57"E**, passing at a distance of 50.65 feet a 1/2-inch iron rod with "LSI" cap found for the common south corner of said Lot 93 and said Lot 50, and continuing for a total distance of **180.63** feet to a 1/2-inch iron rod with "LSI" cap found for the northwest corner hereof, said point being in the south right-of-way line of said Grenadier Drive, being the northwest corner of said Lot 93, and being the northeast corner of said Lot 50;

THENCE, with the south right-of-way line of said Grenadier Drive, in part with the north line of said Lot 93, and in part with the north line of said Lot 94, **S60°45'51"E**, a distance of **100.00** feet to the **POINT OF BEGINNING** and containing 0.4145 Acre (18,055 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_100-FT L.A._rev.dwg.)



Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

7/1/2024



**GRENADIER DRIVE
(50' R.O.W.)**

P.O.B.
GRID N: 10,077,875.37
GRID E: 3,025,686.93

(S60°45'47"E 19.93')
S60°45'51"E 19.96'

(S60°45'47"E 100.00')
S60°45'51"E 100.00'

BLOCK N
PROVENCE PHASE 1,
SECTION 6A
DOC. NO. 202300054
O.P.R.T.C.T.

BLOCK N
PROVENCE PHASE 1,
SECTION 6A
DOC. NO. 202300054
O.P.R.T.C.T.

LOT 52 LOT 51 LOT 50

LOT 49 LOT 48
**0.4145 ACRE(S)
18,055 SQUARE FEET**

N29°10'57"E 180.63'

S29°13'00"W 125.00'
(S29°14'13"W 125.02')

50.00' [A] 50.00' [A]
LOT 93 LOT 94
OWNER: OWNER:
[B] [B]

129.98' (130.01')
S29°11'02"W 129.98'

[A]
LOT 92A
OWNER: [B]

EMERGENCY ACCESS
EASEMENT
DOC. NO. 2023019111
O.P.R.T.C.T.

(L4)
L4
16.67' 78.31'

"JE GARON
4803"

(L2)
{L2}

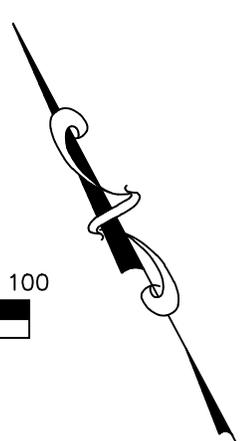
LAKE TRAVIS INDEPENDENT
SCHOOL DISTRICT
CALLED 14.6253 ACRES
DOC. NO. 2023104354
O.P.R.T.C.T.

JPH CAPITAL, LTD
CALLED 0.859 ACRES
("TRACT 3")
DOC. NO. 2004153390
O.P.R.T.C.T.

SUSU REALTY, INC.
CALLED 4.51 ACRES
DOC. NO. 2015054557
O.P.R.T.C.T.



GRAPHIC SCALE: 1" = 50'



APPROXIMATE LOCATION
OF SURVEY LINE

[1]

[2]

**EXHIBIT FOR
0.4145 ACRES
City of Austin,
Travis County, Texas**



296
PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	7/1/2024
Project:	01707
Scale:	1" = 50'
Reviewer:	DV
Tech:	TE
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

CURVE TABLE

CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
C1	335.00'	12.02'	2°03'20"	S28°18'10"W	12.02'
C2	335.00'	4.98'	0°51'09"	S27°42'04"W	4.98'
C3	335.00'	7.04'	1°12'12"	S28°43'44"W	7.04'

RECORD CURVE TABLE

CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
(C1)	335.00'	12.04'	2°03'34"	S28°06'56"W	12.04'
{C1}	335.00'	12.04'	2°03'33"	S28°06'56"W	12.04'

[A]

REPLAT LOT 92, BLOCK N
PROVENCE PHASE 1, SECTION 6A
DOC. NO. 202400058, O.P.R.T.C.T.

[B]

MASONWOOD HP, LTD.
DOC. NO. 2017038374, O.P.R.T.C.T.

[C]

LOT 1, BLOCK N
PROVENCE PHASE 1, SECTION 1
DOC. NO. 201900014, O.P.R.T.C.T.

[1]

**JOHN KELLER
SURVEY NO. 25
ABSTRACT NO. 2169**

[2]

**WILLIAM McINTIRE
SURVEY NO. 91
ABSTRACT NO. 533**



Jason Ward
7/1/2024

NOTES:

1. ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.

2. SEE ATTACHED METES AND BOUNDS DESCRIPTION.

LEGEND

	PROPERTY LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON ROD FOUND (UNLESS NOTED)
	1/2" IRON PIPE FOUND (UNLESS NOTED)
	IRON ROD WITH "LSI" CAP FOUND (UNLESS NOTED)
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
P.O.B.	POINT OF BEGINNING
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
(.....)	RECORD INFORMATION PER PLAT DOC. NO. 202300054
{.....}	RECORD INFORMATION PER PLAT DOC. NO. 201900014

LINE TABLE

LINE #	DIRECTION	LENGTH
L1	S29°19'56"W	43.44'
L2	N60°52'57"W	70.01'
L3	N60°48'37"W	29.99'
L4	N60°48'37"W	124.97'
L5	S60°45'47"E	100.06'

RECORD LINE TABLE

LINE #	DIRECTION	LENGTH
(L1)	S29°08'42"W	43.52'
{L1}	S29°08'42"W	43.52'
(L2)	N60°44'40"W	70.00'
{L2}	N60°44'40"W	70.00'
(L4)	N60°53'16"W	124.88'

**EXHIBIT FOR
0.4145 ACRES
City of Austin,
Travis County, Texas**



297
PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	7/1/2024
Project:	01707
Scale:	N/A
Reviewer:	DV
Tech:	TE
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	2 OF 2



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-05 Determining that Certain Property Containing 0.7811 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings

RECOMMENDED ACTION

Approve Resolution No. 101624-05 Determining that Certain Property Containing 0.7811 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings.

RATIONALE

The Board has previously found and determined that public convenience and necessity require the acquisition of certain real property owned by Masonwood HP, Ltd. for the construction of a school facility. The Board has already authorized the Superintendent, or his designee, to make an offer to the owner for the acquisition based on its appraised value. The Superintendent and his designees are continuing their attempts to negotiate with the owner for the purchase of the property and/or property rights as applicable. However, in the event the District cannot successfully negotiate the acquisition based on the appraised value, the District will need to exercise its right to acquire the property through eminent domain. This resolution provides the District the authority to take such action in the event direct negotiations with the landowner are not successful.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services

ATTACHMENTS

Resolution No. 101642-05

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-05

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT DETERMINING THAT CERTAIN PROPERTY CONTAINING APPROXIMATELY 0.7811 ACRE OF LAND IS NEEDED FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A PUBLIC SCHOOL AND AUTHORIZING THE INSTITUTION OF EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has found a public use and necessity for the acquisition of a waterline easement and an underground electric line easement on certain property, as stated herein and for the purposes stated herein; and

WHEREAS, due to the growing population within Lake Travis Independent School District and in order to meet the needs of this population and to fulfill the District's obligation to provide public education as mandated by Chapter 11 of the Texas Education Code, the Board of Trustees has found and determined that it is necessary to construct additional public school improvements within the District; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of underground electric utility line easement tract No.1 described as a tract of land containing approximately 0.0143 acre of land, more or less, out of Lot 94, Block N, PROVENCE PHASE 1 SECTION 4A, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Document No. 202200255, Official Public Records, Travis County, Texas and an underground electric utility line easement tract No.2 described as a tract of land containing approximately 0.2660 acre of land, more or less, out of the WM. McINTIRE SURVEY, NO. 91, ABSTRACT NO. 533, in Travis County, Texas located on Hamilton Pool Road (collectively, the "Electric Line Easements") to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of waterline easement tract No. 1 described as a tract of land containing approximately 0.0372 acre of land, more or less, out of Lot 94, Block N, PROVENCE PHASE 1 SECTION 4A, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Document No. 202200255, Official Public Records, Travis County, Texas. Located on Hamilton Pool Road and a waterline easement tract No. 2 described as a tract of land containing approximately 0.4636 acre of land, more or less, out of the WM. McINTIRE SURVEY, NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road. (collectively, the “Waterline Easements”) to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of the Lake Travis Independent School District has found and determined that the acquisition of above described Water Line Easements and Electric Line Easements (collectively, the “Easements”) to construct additional public-school improvements and related infrastructure will serve the public purpose of promoting public education; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the property for the purchase of the Easements for the purpose stated herein; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the

property for the purchase of the Easements for the purposes stated herein.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District that, should the Superintendent, or his designees, be unable to purchase from the landowner(s) of the Easements herein described, the Superintendent, acting through his staff or other authorized designee, is hereby authorized to bring eminent domain proceedings on behalf of the Lake Travis Independent School District under applicable provisions of law, whether provided by Section 11.155 of the Texas Education Code, as amended, Chapter 21 of the Texas Property Code, or by any other provision of law, against the owner or owners of the property, to-wit:

MASONWOOD HP, LTD., a Texas limited partnership and any other party who may own an interest in the Property.

Said owner or owners being the owner of the easement property described in the attached Exhibit A-1 and Exhibit A-2, incorporated herein for all purposes and the easement property described in the attached Exhibit B-1 and Exhibit B-2 incorporated herein for all purposes.

Adopted this ____ day of _____, 2024 by the Board of Trustees of the Lake Travis Independent School District.

Erin Archer, Board President

Keely Cano, Board Secretary

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.0143 ACRE (623 SQUARE FEET) OUT OF LOT 94 (OPEN SPACE DRAINAGE AND WATER QUALITY EASEMENT), BLOCK N, PROVENCE PHASE 1, SECTION 4A, A SUBDIVISION RECORDED IN DOCUMENT NO. 202200255 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID LOT 94 HAVING BEEN CONVEYED TO MASONWOOD HP, LTD. IN DOCUMENT NO. 2017038374 (O.P.R.T.C.T.), SAID 0.0143 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



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Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

COMMENCING, at a 1/2-inch iron rod with "LSI" cap found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies), being the southeast corner of said Lot 94, being the southwest corner of a called 3.887 acre tract (described as "Tract 6") conveyed to Masonwood HP, Ltd. in Document No. 2021186700 (O.P.R.T.C.T.), being the northwest corner of a called 0.445 acre right-of-way dedication to the State of Texas in Document No. 2022119877 (O.P.R.T.C.T.), and being the northeast corner of 35-foot right-of-way dedication recorded in Document No. 202200255 (O.P.R.T.C.T.), from which a 1/2-inch iron rod with "LSI" cap found in the west right-of-way line of Martinet Drive (90' right-of-way, this portion of Martinet Drive having been dedicated in Document No. 202200255, O.P.R.T.C.T.), being the northwest corner of said 35-foot right-of-way dedication, and being in the east line of a called 39.978 acre tract (described as "Tract 1") conveyed to The Paula Priour Trust in Document No. 2016165407 (O.P.R.T.C.T.), bears, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 33.70 feet, and whose chord bears, S83°01'18"W, a distance of 33.70 feet to a calculated point for a point of curvature, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 50.51 feet, and whose chord bears, S81°25'56"W, a distance of 50.51 feet to a calculated point, and S80°28'44"W, a distance of 41.49 feet

THENCE, leaving the north right-of-way line of said FM 3238, with the common line of said Lot 94 and said 3.887 acre tract, N00°33'11"E, a distance of 48.03 feet to a calculated point for the southeast corner and **POINT OF BEGINNING** hereof,

THENCE, over and across said Lot 94, S89°58'57"W, a distance of **31.49** feet to a calculated point for the southwest corner hereof, said point being in the east right-of-way line of said Martinet Drive, and being in the west line of said Lot 94;

THENCE, with the west right-of-way line of said Martinet Drive and the west line of said Lot 94, N02°39'32"E, a distance of **20.02** feet to a calculated point for the northwest corner hereof;

THENCE, leaving the east right-of-way line of said Martinet Drive, over and across said Lot 94, N89°58'57"E, a distance of **30.76** feet to a calculated point for the northeast corner hereof, said point being in the common line of said Lot 94 and said 3.887 acre tract;

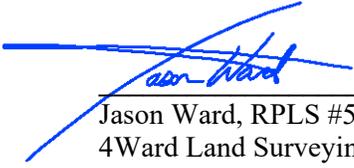
THENCE, with the common line of said Lot 94 and said 3.887 acre tract, S00°33'11"W, a distance of **20.00** feet to the **POINT OF BEGINNING** and containing 0.0143 Acre (623 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_PCE_6.dwg.)

References:

TCAD Parcel #976128
COA Grid #WU24



3/29/2024

Jason Ward, RPLS #5811
4Ward Land Surveying, LLC



[B]

WILLIAM McINTIRE SURVEY NO. 91 ABSTRACT NO. 533

MASONWOOD HP, LTD
CALLED 19.54 ACRES
("TRACT 8")
DOC. NO. 2021186700
O.P.R.T.C.T.

MARTINET DRIVE (90' R.O.W.)
DOC. NO. 202200255 O.P.R.T.C.T.
(AS PLATTED IN
DOC. NO. 2021186700 O.P.R.T.C.T.)

MASONWOOD HP, LTD
CALLED 3.887 ACRES
("TRACT 6")
DOC. NO. 2021186700 O.P.R.T.C.T.

DRAINAGE
EASEMENT
DOC. NO. 2021267490
O.P.R.T.C.T.

THE
PAULA PRIOUR TRUST
CALLED 39.978 ACRES
("TRACT 1")
DOC. NO. 2016165407
O.P.R.T.C.T.

**ELECTRIC
EASEMENT**
0.0143 ACRE(S)
623 SQUARE FEET

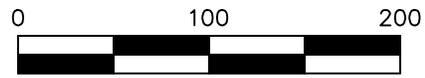
P.O.B.
GRID N: 10,077,677.81
GRID E: 3,023,357.44

STATE OF TEXAS
CALLED 0.445 ACRE
RIGHT-OF-WAY
DEDICATION
DOC. NO. 2022119877
O.P.R.T.C.T.

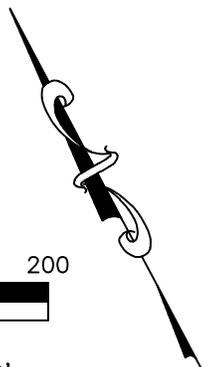
35' R.O.W.
DEDICATION
DOC. NO. 202200255
O.P.R.T.C.T.

P.O.C.
GRID N: 10,077,629.78
GRID E: 3,023,356.98

FM 3238
(AKA HAMILTON POOL
ROAD, R.O.W. VARIES)



GRAPHIC SCALE: 1" = 100'



**0.0143 ACRES
ELECTRIC EASEMENT
City of Austin,
Travis County, Texas**



A Limited Liability Company

304 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	3/29/2024
Project:	01707
Scale:	1" = 100'
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
C1	1,482.28'	300.31'	11°36'30"	N89°16'30"E	299.80'
C2	1,517.28'	50.51'	1°54'26"	N81°25'56"E	50.51'
C3	1,517.28'	33.70'	1°16'21"	S83°01'18"W	33.70'

RECORD CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
{C1}	1,482.28'	300.31'	11°36'30"	N89°16'55"E	299.80'
(C2)	1,517.28	50.49'	1°54'24"	S81°24'59"W	50.49'
(C3)	1,517.28	33.69'	11°16'20"	S83°00'21"W	33.69'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S89°58'57"W	31.49'
L2	N02°39'32"E	20.02'
L3	N89°58'57"E	30.76'
L4	S00°33'11"W	20.00'
L5	N00°33'11"E	48.03'
L6	S00°33'25"W	35.26'
L7	N85°31'07"E	84.75'
L8	S02°39'32"W	52.17'
L9	S80°28'44"W	41.49'

RECORD LINE TABLE		
LINE #	DIRECTION	LENGTH
(L6)	S00°33'50"W	35.26'
{L7}	N85°32'05"E	84.80'
(L9)	S80°27'47"W	41.48'

**0.0143 ACRES
ELECTRIC EASEMENT
City of Austin,
Travis County, Texas**

[A]
LOT 94, BLOCK N
PROVENCE PHASE 1
SECTION 4A
DOC. NO. 202200255
O.P.R.T.C.T.
OWNER:
MASONWOOD HP, LTD.
DOC. NO. 2017038374
O.P.R.T.C.T.

[B]
**SAMUEL
WILDY
SURVEY
NO. 528
ABSTRACT
NO. 799**

NOTES:

1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.

2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

TCAD PARCEL #976128
COA GRID #WU24

LEGEND

	EASEMENT LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON PIPE FOUND (UNLESS NOTED)
	IRON ROD WITH "LSI" CAP FOUND (UNLESS NOTED)
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
TCAD	TRAVIS COUNTY APPRAISAL DISTRICT
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
(.....)	RECORD INFORMATION PER SUBJECT DEEDS
{.....}	RECORD INFORMATION PER ADJOINING DEEDS/PLAT



Jason Ward
3/29/2024

4WARD
Land Surveying
A Limited Liability Company
305 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	3/29/2024
Project:	01707
Scale:	N/A
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	2 OF 2

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.2660 ACRE (11,585 SQUARE FEET) OUT OF THE WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, IN TRAVIS COUNTY, TEXAS, BEING PARTIALLY OUT OF A CALLED 3.887 ACRE TRACT (DESCRIBED AS "TRACT 6") CONVEYED TO MASONWOOD HP, LTD., IN DOCUMENT NO. 2021186700 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), AND BEING PARTIALLY OUT OF A CALLED 19.54 ACRE TRACT (DESCRIBED AS "TRACT 8") CONVEYED TO MASONWOOD HP, LTD., IN DOCUMENT NO. 2021186700 (O.P.R.T.C.T.), SAID 0.2660 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



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Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

COMMENCING, at a 1/2-inch iron rod with "LSI" cap found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies), being the southwest corner of said 3.887 acre tract, being the southeast corner of Lot 94 (Open Space Drainage and Water Quality Easement), Block N, Provence Phase 1, Section 4A, a subdivision recorded in Document No. 202200255 (O.P.R.T.C.T.), being the northwest corner of a called 0.445 acre right-of-way dedication to the State of Texas in Document No. 2022119877 (O.P.R.T.C.T.), and being the northeast corner of 35-foot right-of-way dedication recorded in Document No. 202200255 (O.P.R.T.C.T.), from which a 1/2-inch iron rod with "LSI" cap found in the west right-of-way line of Martinet Drive (90' right-of-way, this portion of Martinet Drive having been dedicated in Document No. 202200255, O.P.R.T.C.T.), being the northwest corner of said 35-foot right-of-way dedication, and being in the east line of a called 39.978 acre tract (described as "Tract 1") conveyed to The Paula Priour Trust in Document No. 2016165407 (O.P.R.T.C.T.), bears, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 33.70 feet, and whose chord bears, S83°01'18"W, a distance of 33.70 feet to a calculated point for a point of curvature, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 50.51 feet, and whose chord bears, S81°25'56"W, a distance of 50.51 feet to a calculated point, and S80°28'44"W, a distance of 41.49 feet;

THENCE, leaving the north right-of-way line of said FM 3238, with the common line of said 3.887 acre tract and said Lot 94, N00°33'11"E, a distance of 48.03 feet to a calculated point for the southwest corner and **POINT OF BEGINNING** hereof;

THENCE, with the common line of said 3.887 acre tract and said Lot 94, N00°33'11"E, a distance of **20.00** feet to a calculated point for the northwest corner hereof;

THENCE, in part over and across said 3.887 acre tract, and in part over and across said 19.54 acre tract, the following two (2) courses and distances:

- 1) **N89°58'57"E**, a distance of **344.44** feet to a calculated point for an angle point hereof, and
- 2) **S75°13'23"E**, a distance of **239.68** feet to a calculated point for the northeast corner hereof, said point being in the east line of said 19.54 acre tract, also being in the west line of a called 0.974 acre tract conveyed to WTF Harrell Property Management, LLC, in Document No. 2014101366 (O.P.R.T.C.T.), from which a 5/8" iron rod found in the east line of said 19.54 acre tract, being the northwest corner of said 0.974 acre tract, and being an angle point in the west line of a called 7.9720 acre tract conveyed to Lake Travis

Independent School District in Document No. 2023101249 (O.P.R.T.C.T.), bears, N27°57'32"E, a distance of 299.44 feet;

THENCE, with the common line of said 19.54 acre tract and said 0.974 acre tract, **S27°57'32"W**, a distance of **20.54** feet to a calculated point for the southeast corner hereof, from which a 1/2-inch iron rod found for an angle point for an angle point in the north right-of-way line of said FM3238, for the southwest corner of said 0.974 acre tract, and being the southeast corner of said 0.445 acre right-of-way tract, bears, **S27°57'32"W**, a distance of 60.09 feet;

THENCE, in part over and across said 19.54 acre tract, and in part over and across said 3.887 acre tract, the following two (2) courses and distances:

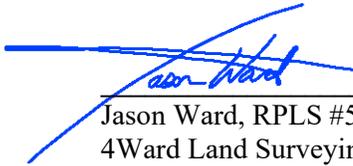
- 1) **N75°13'28"W**, a distance of **232.40** feet to a calculated point for an angle point hereof, and
- 2) **S89°58'57"W**, a distance of **342.04** feet to the **POINT OF BEGINNING** and containing 0.2660 Acre (11,585 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_PCE_7.dwg.)

References:

TCAD Parcel #946640
COA Grid #WU24


Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

4/1/2024



**WILLIAM McINTIRE
SURVEY NO. 91
ABSTRACT NO. 533**

MASONWOOD HP, LTD
CALLED 19.54 ACRES
("TRACT 8")
DOC. NO. 2021186700
O.P.R.T.C.T.

DRAINAGE
EASEMENT
DOC. NO. 2021267490
O.P.R.T.C.T.

MASONWOOD HP, LTD
CALLED 3.887 ACRES
("TRACT 6")
DOC. NO. 2021186700, O.P.R.T.C.T.

ELECTRIC EASEMENT
0.2660 ACRE(S)
11,585 SQUARE FEET

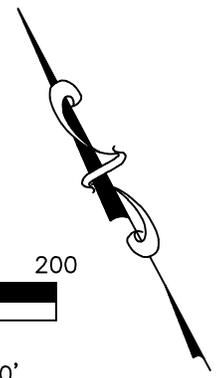
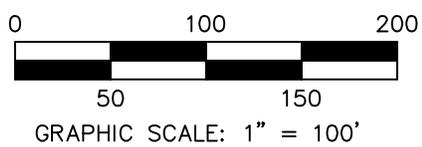
STATE OF TEXAS
CALLED 0.445 ACRE
RIGHT-OF-WAY
DEDICATION
DOC. NO. 2022119877
O.P.R.T.C.T.

P.O.B.
GRID N: 10,077,677.81
GRID E: 3,023,357.44

P.O.C.
GRID N: 10,077,629.78
GRID E: 3,023,356.98

35' R.O.W.
DEDICATION
DOC. NO. 202200255
O.P.R.T.C.T.

**FM 3238
(AKA HAMILTON POOL
ROAD, R.O.W. VARIES)**



**0.2660 ACRE
ELECTRIC EASEMENT
City of Austin,
Travis County, Texas**

4WARD
Land Surveying
A Limited Liability Company

308 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	4/1/2024
Project:	01707
Scale:	1" = 100'
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N00°33'11"E	20.00'
L2	S27°57'32"W	20.54'
L3	N00°33'11"E	48.03'
L4	S80°28'44"W	41.49'

RECORD LINE TABLE		
LINE #	DIRECTION	LENGTH
{L4}	S80°27'47"W	41.48'

LEGEND	
	EASEMENT LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON PIPE FOUND (UNLESS NOTED)
	IRON ROD WITH "LSI" CAP FOUND (UNLESS NOTED)
	1/2" IRON ROD FOUND (UNLESS NOTED)
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
TCAD	TRAVIS COUNTY APPRAISAL DISTRICT
{.....}	RECORD INFORMATION PER ADJOINING DEEDS/PLAT

CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
C1	1,517.28'	33.70'	1°16'21"	S83°01'18"W	33.70'
C2	1,517.28'	50.51'	1°54'26"	S81°25'56"W	50.51'

RECORD CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
{C1}	1,517.28	33.69'	1°16'20"	S83°00'21"W	33.69'
{C2}	1,517.28	50.49'	1°54'24"	S81°24'59"W	50.49'

[A]
**WTF HARRELL
 PROPERTY
 MANAGEMENT, LLC**
 CALLED 0.974 ACRES
 DOC. NO. 2014101366
 O.P.R.T.C.T.

[B]
**LAKE TRAVIS
 INDEPENDENT
 SCHOOL DISTRICT**
 CALLED 7.9720 ACRES
 DOC. NO. 2023104249
 O.P.R.T.C.T.

[C]
**THE
 PRIOR PAULA TRUST**
 CALLED 39.978 ACRES
 DOC. NO. 2016165407
 O.P.R.T.C.T.

[D]
**LOT 94, BLOCK N
 PROVENCE PHASE 1
 SECTION 4A**
 DOC. NO. 202200255
 O.P.R.T.C.T.



3/29/2024

**[1]
 MARTINET DRIVE
 (90' R.O.W.)
 (AS PLATTED IN
 DOC. NO. 202200255 O.P.R.T.C.T.)**

NOTES:

- 1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.
- 2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

TCAD PARCEL #946640
 COA GRID #WU24

**0.2660 ACRE
 ELECTRIC EASEMENT
 City of Austin,
 Travis County, Texas**

4WARD
 Land Surveying
 A Limited Liability Company

309 PO Box 90876, Austin Texas 78709
 INFO@4WARDLS.COM (512) 537-2384
 TBPELS FIRM #10174300

Date:	4/1/2024
Project:	01707
Scale:	N/A
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	2 OF 2

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.0372 ACRE (1,621 SQUARE FEET) OUT OF LOT 94 (OPEN SPACE DRAINAGE AND WATER QUALITY EASEMENT), BLOCK N, PROVENCE PHASE 1, SECTION 4A, A SUBDIVISION RECORDED IN DOCUMENT NO. 202200255 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID LOT 94 HAVING BEEN CONVEYED TO MASONWOOD HP, LTD. IN DOCUMENT NO. 2017038374 (O.P.R.T.C.T.), SAID 0.0372 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



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Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod with "LSI" cap found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies), being the southeast corner of said Lot 94, being the southwest corner of a called 3.887 acre tract (described as "Tract 6") conveyed to Masonwood HP, Ltd. in Document No. 2021186700 (O.P.R.T.C.T.), being the northwest corner of a called 0.445 acre right-of-way dedication to the State of Texas in Document No. 2022119877 (O.P.R.T.C.T.), and being the northeast corner of 35-foot right-of-way dedication recorded in Document No. 202200255 (O.P.R.T.C.T.) for the southeast corner and **POINT OF BEGINNING** hereof;

THENCE, with the north right-of-way line of said FM 3238, with the south line of said Lot 94, and with the north line of said 35-foot right-of-way dedication, along a curve to the left, whose radius is **1,517.28** feet, whose arc length is **33.70** feet, and whose chord bears, **S83°01'18"W**, a distance of **33.70** feet to a calculated point for the southwest corner hereof, said point being at the intersection of the north right-of-way line of said FM 3238 and the east right-of-way line of Martinet Drive (90' right-of-way, this portion of Martinet Drive having been dedicated in Document No. 202200255, O.P.R.T.C.T.), also being the southwest corner of said Lot 94, from which a 1/2-inch iron rod with "LSI" cap found in the west right-of-way line of said Martinet Drive, being the northwest corner of said 35-foot right-of-way dedication, and being in the east line of a called 39.978 acre tract (described as "Tract 1") conveyed to The Paula Prior Trust in Document No. 2016165407 (O.P.R.T.C.T.), bears, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 50.51 feet, and whose chord bears, **S81°25'56"W**, a distance of 50.51 feet to a calculated point, and **S80°28'44"W**, a distance of 41.49 feet;

THENCE, with the east right-of-way line of said Martinet Drive and the west line of said Lot 94, **N02°39'32"E**, a distance of **52.17** feet to a calculated point for the northwest corner hereof;

THENCE, leaving the east right-of-way line of said Martinet Drive, over and across said Lot 94, **N89°58'57"E**, a distance of **31.49** feet to a calculated point for the northeast corner hereof, said point being in the common line of said Lot 94 and said 3.887 acre tract;

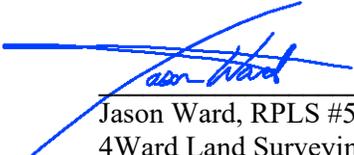
THENCE, with the common line of said Lot 94 and said 3.887 acre tract, **S00°33'11"W**, a distance of **48.03** feet to the **POINT OF BEGINNING** and containing 0.0372 Acre (1,621 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_WLE_1.dwg.)

References:

TCAD Parcel #976128
COA Grid #WU24



Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

3/28/2024



[B]

APPROXIMATE
LOCATION OF
SURVEY LINE

MARTINET DRIVE (90' R.O.W.)
DOC. NO. 202200255 O.P.R.T.C.T.
(AS PLATTED IN
DOC. NO. 2021186700 O.P.R.T.C.T.)

MASONWOOD HP, LTD
CALLED 3.887 ACRES
("TRACT 6")
DOC. NO. 2021186700 O.P.R.T.C.T.

**WILLIAM McINTIRE
SURVEY NO. 91
ABSTRACT NO. 533**

DRAINAGE
EASEMENT
DOC. NO. 2021267490
O.P.R.T.C.T.

MASONWOOD HP, LTD
CALLED 19.54 ACRES
("TRACT 8")
DOC. NO. 2021186700
O.P.R.T.C.T.

THE
PAULA PRIOUR TRUST
CALLED 39.978 ACRES
("TRACT 1")
DOC. NO. 2016165407
O.P.R.T.C.T.

P.O.B.
GRID N: 10,077,629.78
GRID E: 3,023,356.98

STATE OF TEXAS
CALLED 0.445 ACRE
RIGHT-OF-WAY
DEDICATION
DOC. NO. 2022119877
O.P.R.T.C.T.

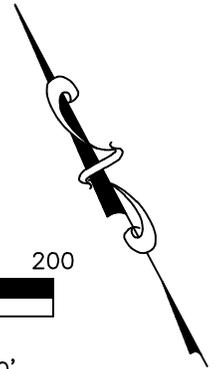
**WATER LINES
EASEMENT
0.0372 ACRE(S)
1,621 SQUARE FEET**

35' R.O.W.
DEDICATION
DOC. NO. 202200255
O.P.R.T.C.T.

**FM 3238
(AKA HAMILTON POOL
ROAD, R.O.W. VARIES)**



GRAPHIC SCALE: 1" = 100'



**0.0372 ACRES
WATER LINES
EASEMENT
City of Austin,
Travis County, Texas**



A Limited Liability Company

312 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	3/28/2024
Project:	01707
Scale:	1" = 100'
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
C1	1,517.28'	33.70'	1°16'21"	S83°01'18"W	33.70'
C2	1,517.28'	50.51'	1°54'26"	S81°25'56"W	50.51'
C3	1,482.28'	300.31'	11°36'30"	N89°16'30"E	299.80'

RECORD CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
(C1)	1,517.28	33.69'	11°16'20"	S83°00'21"W	33.69'
(C2)	1,517.28	50.49'	1°54'24"	S81°24'59"W	50.49'
{C3}	1,482.28'	300.32'	11°36'30"	N89°16'55"E	299.80'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N02°39'32"E	52.17'
L2	N89°58'57"E	31.49'
L3	S00°33'11"W	48.03'
L4	S00°33'25"W	35.26'
L5	N85°31'07"E	84.75'
L6	S80°28'44"W	41.49'

RECORD LINE TABLE		
LINE #	DIRECTION	LENGTH
(L4)	S00°33'50"W	35.26'
{L5}	N85°32'05"E	84.80'
(L6)	S80°27'47"W	41.48'

[A]
 LOT 94, BLOCK N
 PROVENCE PHASE 1
 SECTION 4A
 DOC. NO. 202200255
 O.P.R.T.C.T.

OWNER:
 MASONWOOD HP, LTD.
 DOC. NO. 2017038374
 O.P.R.T.C.T.

[B]
SAMUEL WILDY
SURVEY NO. 528
ABSTRACT NO. 799



Jason Ward
 3/28/2024

LEGEND	
	EASEMENT LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON PIPE FOUND (UNLESS NOTED)
	IRON ROD WITH "LSI" CAP FOUND (UNLESS NOTED)
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
TCAD	TRAVIS COUNTY APPRAISAL DISTRICT
(.....)	RECORD INFORMATION PER SUBJECT DEEDS
{.....}	RECORD INFORMATION PER ADJOINING DEEDS/PLAT

NOTES:

- 1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.
- 2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

TCAD PARCEL #976128
 COA GRID #WU24

**0.0372 ACRES
 WATER LINES
 EASEMENT
 City of Austin,
 Travis County, Texas**

<p>A Limited Liability Company 313 PO Box 90876, Austin Texas 78709 INFO@4WARDLS.COM (512) 537-2384 TBPELS FIRM #10174300</p>	Date:	3/28/2024
	Project:	01707
	Scale:	N/A
	Reviewer:	DV
	Tech:	CC
	Field Crew:	SV/JJ
	Survey Date:	JUL. 2023
Sheet:	2 OF 2	

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.4636 ACRE (20,196 SQUARE FEET) OUT OF THE WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, IN TAVIS COUNTY, TEXAS, BEING PARTIALLY OUT OF A CALLED 3.887 ACRE TRACT (DESCRIBED AS "TRACT 6") CONVEYED TO MASONWOOD HP, LTD., IN DOCUMENT NO. 2021186700 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), AND BEING PARTIALLY OUT OF A CALLED 19.54 ACRE TRACT (DESCRIBED AS "TRACT 8") CONVEYED TO MASONWOOD HP, LTD., IN DOCUMENT NO. 2021186700 (O.P.R.T.C.T.), SAID 0.4636 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod with "LSI" cap found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies), being the southwest corner of said 3.887 acre tract, being the southeast corner of Lot 94 (Open Space Drainage and Water Quality Easement), Block N, Provence Phase 1, Section 4A, a subdivision recorded in Document No. 202200255 (O.P.R.T.C.T.), being the northwest corner of a called 0.445 acre right-of-way dedication to the State of Texas in Document No. 2022119877 (O.P.R.T.C.T.), and being the northeast corner of 35-foot right-of-way dedication recorded in Document No. 202200255 (O.P.R.T.C.T.) for the southwest corner and **POINT OF BEGINNING** hereof, from which a 1/2-inch iron rod with "LSI" cap found in the west right-of-way line of Martinet Drive (90' right-of-way, this portion of Martinet Drive having been dedicated in Document No. 202200255, O.P.R.T.C.T.), being the northwest corner of said 35-foot right-of-way dedication, and being in the east line of a called 39.978 acre tract (described as "Tract 1") conveyed to The Paula Priour Trust in Document No. 2016165407 (O.P.R.T.C.T.), bears, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 33.70 feet, and whose chord bears, S83°01'18"W, a distance of 33.70 feet to a calculated point for a point of curvature, along a curve to the left, whose radius is 1,517.28 feet, whose arc length is 50.51 feet, and whose chord bears, S81°25'56"W, a distance of 50.51 feet to a calculated point, and S80°28'44"W, a distance of 41.49 feet;

THENCE, leaving the north right-of-way line of said FM 3238, with the common line of said 3.887 acre tract and said Lot 94, **N00°33'11"E**, a distance of **48.03** feet to a calculated point for the northwest corner hereof;

THENCE, in part over and across said 3.887 acre tract, and in part over and across said 19.54 acre tract, the following two (2) courses and distances:

- 1) **N89°58'57"E**, a distance of **342.04** feet to a calculated point for an angle point hereof, and
- 2) **S75°13'28"E**, a distance of **232.40** feet to a calculated point for the northeast corner hereof, said point being in the east line of said 19.54 acre tract, also being in the west line of a called 0.974 acre tract conveyed to WTF Harrell Property Management, LLC, in Document No. 2014101366 (O.P.R.T.C.T.), from which a 5/8" iron rod found in the east line of said 19.54 acre tract, being the northwest corner of said 0.974 acre tract, and being an angle point in the west line of a called 7.9720 acre tract conveyed to Lake Travis Independent School District in Document No. 2023101249 (O.P.R.T.C.T.), bears, **N27°57'32"E**, a distance of 319.97 feet;

THENCE, with the common line of said 19.54 acre tract and said 0.974 acre tract, **S27°57'32"W**, a distance of **25.68** feet to a calculated point for the southeast corner hereof, said point being an angle point in the north right-of-way line of said FM 3238, being the southeast corner of said 19.54 acre tract, and being the northeast corner of said 0.445 acre right-of-way tract, from which a 1/2-inch iron rod found for an angle point for an angle point in the north right-of-way line of said FM3238, for the southwest corner of said 0.974 acre tract, and being the southeast corner of said 0.445 acre right-of-way tract, bears, **S27°57'32"W**, a distance of 34.41 feet;

THENCE, with the north right-of-way line of said FM 3238, in part with the south line of said 19.54 acre tract, in part with the south line of said 3.887 acre tract, and with the north line of said 0.445 acre right-of-way tract, the following three (3) courses and distances:

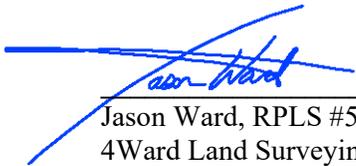
- 1) **N75°13'28"W**, a distance of **173.75** feet to a calculated point for an angle point hereof,
- 2) **S85°31'40"W**, a distance of **87.83** feet to a calculated point for an angle point hereof, and
- 3) Along a curve to the left, whose radius is **1,517.28** feet, whose arc length is **300.12** feet, and whose chord bears, **S89°18'06"W**, a distance of **299.63** feet to the **POINT OF BEGINNING** and containing 0.4636 Acre (20,196 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_WLE_2.dwg.)

References:

TCAD Parcel #946640
COA Grid #WU24



Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

4/1/2024



**WILLIAM MCINTIRE
SURVEY NO. 91
ABSTRACT NO. 533**

LAKE TRAVIS
INDEPENDENT
SCHOOL DISTRICT
CALLED 7.9720 ACRES
DOC. NO. 2023104249
O.P.R.T.C.T.

LOT 94, BLOCK N
PROVENCE PHASE 1
SECTION 4A
DOC. NO. 202200255
O.P.R.T.C.T.

MASONWOOD HP, LTD
CALLED 19.54 ACRES
("TRACT 8")
DOC. NO. 2021186700
O.P.R.T.C.T.

**WATER LINES
EASEMENT**
0.4636 ACRE(S)
20,196 SQUARE FEET

DRAINAGE
EASEMENT
DOC. NO. 2021267490
O.P.R.T.C.T.

MASONWOOD HP, LTD
CALLED 3.887 ACRES
("TRACT 6")
DOC. NO. 2021186700, O.P.R.T.C.T.

N89°58'57"E 342.04'
C1 [C1]

S75°13'28"E 232.40'
L2 [L2]

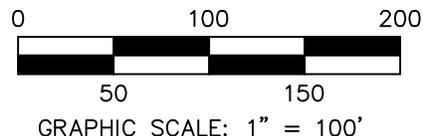
L3 34.41'
(L3) [L3]

FROM WHICH A
1/2" IRON ROD
FOUND BEARS
S01°31'22"E, 1.56'

P.O.B.
GRID N: 10,077,629.78
GRID E: 3,023,356.98

**FM 3238
(AKA HAMILTON POOL
ROAD, R.O.W. VARIES)**

35' R.O.W.
DEDICATION
DOC. NO. 202200255
O.P.R.T.C.T.



**0.4636 ACRES
WATER LINES
EASEMENT
City of Austin,
Travis County, Texas**

4WARD
Land Surveying
A Limited Liability Company

316 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	3/29/2024
Project:	01707
Scale:	1" = 100'
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
C1	1,517.28'	300.12'	11°19'59"	S89°18'06"W	299.63'
C2	1,517.28'	33.70'	1°16'21"	S83°01'18"W	33.70'
C3	1,517.28'	50.51'	1°54'26"	N81°25'56"E	50.51'

RECORD CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
[C1]	1,517.28'	300.12'	11°19'59"	S89°18'31"W	299.63'
[C2]	1,517.28	33.69'	11°16'20"	S83°00'21"W	33.69'
[C3]	1,517.28	50.49'	1°54'24"	S81°24'59"W	50.49'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N00°33'11"E	48.03'
L2	S27°57'32"W	25.68'
L3	N75°13'28"W	173.75'
L4	S85°31'40"W	87.83'
L5	N80°28'44"E	41.49'

RECORD LINE TABLE		
LINE #	DIRECTION	LENGTH
(L3)	N76°46'57"W	174.52'
[L3]	N75°13'03"W	174.52'
(L4)	S57°32'05"W	87.83'
[L4]	S85°32'05"W	87.83'
[L5]	S80°27'47"W	41.48'

[A]
MARTINET DRIVE
(90' R.O.W.)
 (AS PLATTED IN
 DOC. NO. 202200255
 O.P.R.T.C.T.)

[B]
 STATE OF TEXAS
 CALLED 0.445 ACRE
 RIGHT-OF-WAY
 DEDICATION
 DOC. NO. 2022119877
 O.P.R.T.C.T.

0.4636 ACRES
WATER LINES
EASEMENT
City of Austin,
Travis County, Texas

[C]
 THE PAULA
 PRIOR TRUST
 CALLED 39.978 ACRES
 ("TRACT 1")
 DOC. NO. 2016165407
 O.P.R.T.C.T.

[D]
 WTF HARRELL PROPERTY
 MANAGEMENT, LLC
 CALLED 0.974 ACRES
 DOC. NO. 2014101366
 O.P.R.T.C.T.

LEGEND	
	EASEMENT LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON PIPE FOUND (UNLESS NOTED)
	IRON ROD WITH "LSI" CAP FOUND (UNLESS NOTED)
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
TCAD	TRAVIS COUNTY APPRAISAL DISTRICT
P.O.B.	POINT OF BEGINNING
(.....)	RECORD INFORMATION PER SUBJECT DEEDS
[.....]	RECORD INFORMATION PER ADJOINING DEEDS/PLAT



Jason Ward
 3/29/2024

NOTES:

- 1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.
- 2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

TCAD PARCEL #946640
 COA GRID #WU24

<p>4WARD Land Surveying <i>A Limited Liability Company</i></p> <p>317 PO Box 90876, Austin Texas 78709 INFO@4WARDLS.COM (512) 537-2384 TBPELS FIRM #10174300</p>	Date:	3/29/2024
	Project:	01707
	Scale:	N/A
	Reviewer:	DV
	Tech:	CC
	Field Crew:	SV/JJ
	Survey Date:	JUL. 2023
	Sheet:	2 OF 2



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-06 Determining that Certain Property Containing 0.2012 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings

RECOMMENDED ACTION

Approve Resolution No. 101624-06 Determining that Certain Property Containing 0.2012 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings.

RATIONALE

The Board has previously found and determined that public convenience and necessity require the acquisition of certain real property owned by WTF Harrell Property Management LLC for the construction of a school facility. The Board has already authorized the Superintendent, or his designee, to make an offer to the owner for the acquisition based on its appraised value. The Superintendent and his designees are continuing their attempts to negotiate with the owner for the purchase of the property and/or property rights as applicable. However, in the event the District cannot successfully negotiate the acquisition based on the appraised value, the District will need to exercise its right to acquire the property through eminent domain. This resolution provides the District the authority to take such action in the event direct negotiations with the landowner are not successful.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services

ATTACHMENTS

Resolution No. 101642-06

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-06

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT DETERMINING THAT CERTAIN PROPERTY CONTAINING APPROXIMATELY 0.2012 ACRE OF LAND IS NEEDED FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A PUBLIC SCHOOL AND AUTHORIZING THE INSTITUTION OF EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has found a public use and necessity for the acquisition of a waterline easement and an underground electric line easement on certain property, as stated herein and for the purposes stated herein; and

WHEREAS, due to the growing population within Lake Travis Independent School District and in order to meet the needs of this population and to fulfill the District's obligation to provide public education as mandated by Chapter 11 of the Texas Education Code, the Board of Trustees has found and determined that it is necessary to construct additional public school improvements within the District; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of an underground electric utility line easement described as a tract of land containing approximately 0.0523 acre (2,279 square feet) out of the WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road ("Electric Line Easement") to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of a waterline easement described as a tract of land containing approximately 0.1489 ACRE (6,486 square feet) out of the WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, in

Travis County, Texas, located on Hamilton Pool Road (“Waterline Easement”) to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of the Lake Travis Independent School District has found and determined that the acquisition of above described Water Line Easement and Electric Line Easement (collectively, the “Easements”) to construct additional public-school improvements and related infrastructure will serve the public purpose of promoting public education; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the property for the purchase of the Easements for the purpose stated herein; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the property for the purchase of the Easements for the purpose stated herein.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District that, should the Superintendent, or his designees, be unable to purchase from the landowner(s) of the Easements herein described, the Superintendent, acting through his staff or other authorized designee, is hereby authorized to bring eminent domain proceedings on behalf of the Lake Travis Independent School District under applicable provisions of law, whether provided by Section 11.155 of the Texas Education Code, as amended, Chapter 21 of the Texas Property Code, or by any other provision of law, against the owner or owners of the property, to-wit:

WTF Harrell Property Management LLC, a Texas limited liability company and any other party who may own an interest in the land described in the attached Exhibit A and Exhibit B.

Said owner being the owner of the underground electric line easement property described in the attached Exhibit A, incorporated herein for all purposes and the waterline easement property described in the attached Exhibit B incorporated herein for all purposes.

Adopted this ____ day of _____, 2024 by the Board of Trustees of the Lake Travis Independent School District.

Erin Archer, Board President

Keely Cano, Board Secretary

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.0523 ACRE (2,279 SQUARE FEET) OUT OF THE WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, IN TRAVIS COUNTY, TEXAS, BEING OUT OF A CALLED 0.974 ACRE TRACT CONVEYED TO WTF HARRELL PROPERTY MANAGEMENT, LLC, IN DOCUMENT NO. 2014101366 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID 0.0523 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

COMMENCING, at a 1/2-inch iron rod found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies), being the southeast corner of said 0.974 acre tract, and being the most southerly southwest corner of a called 7.9270 acre tract conveyed to Lake Travis Independent School District in Document No. 2023104249 (O.P.R.T.C.T.), from which a TxDot Type I concrete monument found for an angle point in the north right-of-way line of said FM 3238, being in the south line of said 7.9720 acre tract, and being the west corner of a called 0.050 acre tract dedicated to the State of Texas for right-of-way purposes in Volume 4749, Page 1980 of the Real Property Records of Travis County, Texas (R.P.R.T.C.T.), bears, S75°48'20"E, a distance of 30.74 feet;

THENCE, leaving the north right-of-way line of said FM 3238, with the common line of said 0.974 acre tract and said 7.9270 acre tract, N28°05'06"E, a distance of 56.66 feet to a calculated point for the southeast corner and **POINT OF BEGINNING** hereof;

THENCE, over and across said 0.974 acre tract, N74°06'49"W, a distance of **113.72** feet to a calculated point for the southwest corner hereof, said point being in the west line of said 0.974 acre tract, also being in the east line of a called 19.54 acre tract (described as "Tract 8") conveyed to Masonwood HP, Ltd., in Document No. 2021186700 (O.P.R.T.C.T.), from which a 1/2-inch iron rod found for an angle point in the north line of said FM 3238, being the southwest corner of said 0.974 acre tract, and being the southeast corner of a 0.445 acre tract dedicated to the State of Texas for right-of-way purposes recorded in Document No. 2022119877 (O.P.R.T.C.T.), bears, S27°57'32"W, a distance of 60.09 feet;

THENCE, with the common line of said 0.974 acre tract and said 19.54 acre tract, N27°57'32"E, a distance of **20.54** feet to a calculated point for the northwest corner hereof, from which a 5/8-inch iron rod found for the northwest corner of said 0.974 acre tract, being in the east line of said 19.54 acre tract, and being an angle point in the west line of said 7.9720 acre tract, bears, N27°57'32"E, a distance of 299.44 feet;

THENCE, over and across said 0.974 acre tract, S74°04'22"E, a distance of **113.74** feet to a calculated point for the northeast corner hereof, said point being in the common line of said 0.974 acre tract and said 7.9720 acre tract, from which a 5/8-inch iron rod found for the northeast corner of said 0.974 acre tract, being an angle point in the west line of said 7.9720 acre tract, bears, N28°05'06"E, a distance of 302.92 feet;

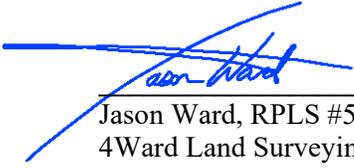
THENCE, with the common line of said 0.974 acre tract and said 7.9720 acre tract, S28°05'06"W, a distance of **20.46** feet to the **POINT OF BEGINNING** and containing 0.0523 Acre (2,279 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_PCE_8.dwg.)

References:

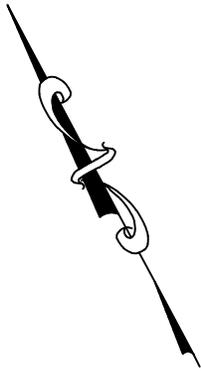
TCAD Parcel #109963
COA Grid #WU24



4/1/2024

Jason Ward, RPLS #5811
4Ward Land Surveying, LLC





MASONWOOD HP, LTD
CALLED 19.54 ACRES
("TRACT 8")
DOC. NO. 2021186700
O.P.R.T.C.T.

**WILLIAM
MCINTIRE
SURVEY NO. 91
ABSTRACT
NO. 533**

STATE OF TEXAS
CALLED 0.445 ACRE
RIGHT-OF-WAY
DEDICATION
DOC. NO. 2022119877
O.P.R.T.C.T.

FROM WHICH A
1/2" IRON ROD
FOUND BEARS
S01°31'22"E, 1.56'

WTF
HARRELL PROPERTY
MANAGEMENT, LLC
CALLED 0.974 ACRES
DOC. NO. 2014101366
O.P.R.T.C.T.

LAKE TRAVIS
INDEPENDENT
SCHOOL DISTRICT
CALLED 7.9720 ACRES
DOC. NO. 2023104249
O.P.R.T.C.T.

**ELECTRIC
EASEMENT**
0.0523 ACRE(S)
2,279 SQUARE FEET

{N28°48'09"E 380.25'}
N27°57'32"E 380.06'

299.44'

302.92'

N28°05'06"E 380.04'
{N28°55'00"E 380.10'}
(N28°54'01"E 380.00')

L1

S74°04'22"E 113.74'

N74°06'49"W 113.72'

L2

56.66'

L3
{L3}

P.O.B.
GRID N: 10,077,587.53
GRID E: 3,024,033.50

P.O.C.
GRID N: 10,077,537.54
GRID E: 3,024,006.82

CALLLED 0.050 ACRE
STATE OF TEXAS
VOL. 4746, PG. 1980
R.P.R.T.C.T.

[11]

**0.0523 ACRE
ELECTRIC EASEMENT
City of Austin,
Travis County, Texas**



324
PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	4/1/2024
Project:	01707
Scale:	1" = 50'
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N27°57'32"E	20.54'
L2	S28°05'06"W	20.46'
L3	S75°48'20"E	30.74'

**[1]
FM 3238
(AKA HAMILTON POOL
ROAD, R.O.W. VARIES)**

LEGEND	
	EASEMENT LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON ROD FOUND (UNLESS NOTED)
	TXDOT TYPE I CONCRETE MONUMENT FOUND
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
R.P.R.T.C.T.	REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS
TCAD	TRAVIS COUNTY APPRAISAL DISTRICT
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
(.....)	RECORD INFORMATION PER ADJOINING DEEDS/PLAT
{.....}	RECORD INFORMATION PER SUBJECT DEEDS



Jason Ward
4/1/2024

NOTES:

- 1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.
- 2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

TCAD PARCEL #109963
COA GRID #WU24

**0.0523 ACRE
ELECTRIC EASEMENT
City of Austin,
Travis County, Texas**

 A Limited Liability Company	Date:	4/1/2024
	Project:	01707
	Scale:	N/A
	Reviewer:	DV
	Tech:	CC
	Field Crew:	SV/JJ
	Survey Date:	JUL. 2023
	Sheet:	2 OF 2

325
PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.1489 ACRE (6,486 SQUARE FEET) OUT OF THE WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, IN TRAVIS COUNTY, TEXAS, BEING OUT OF A CALLED 0.974 ACRE TRACT CONVEYED TO WTF HARRELL PROPERTY MANAGEMENT, LLC, IN DOCUMENT NO. 2014101366 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID 0.1489 ACRE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:



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Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

BEGINNING, at a 1/2-inch iron rod found in the north right-of-way line of FM 3238 (also known as Hamilton Pool Road, right-of-way varies), being the southeast corner of said 0.974 acre tract, and being the most southerly southwest corner of a called 7.9270 acre tract conveyed to Lake Travis Independent School District in Document No. 2023104249 (O.P.R.T.C.T.), for the southeast corner and **POINT OF BEGINNING** hereof, from which a TxDot Type I concrete monument found for an angle point in the north right-of-way line of said FM 3238, being in the south line of said 7.9720 acre tract, and being the west corner of a called 0.050 acre tract dedicated to the State of Texas for right-of-way purposes in Volume 4749, Page 1980 of the Real Property Records of Travis County, Texas (R.P.R.T.C.T.), bears, S75°48'20"E, a distance of 30.74 feet;

THENCE, with the north right-of-way line of said FM 3238 and the south line of said 0.974 acre tract, N75°48'20"W, a distance of **114.36** feet to a 1/2-inch iron rod found for the southwest corner hereof, said point being an angle point in the north right-of-way line of said FM 3238, being the southwest corner of said 0.974 acre tract, and being the southeast corner of a called 0.445 acre tract conveyed to the State of Texas for right-of-way purposes and recorded in Document No. 2022119877 (O.P.R.T.C.T.), from which a 1/2-inch iron rod found bears, S01°31'22"E, a distance of 1.56 feet;

THENCE, in part with the north right-of-way line of said FM 3238, with the west line of said 0.974 acre tract, in part with the east line of said 0.445 acre right-of-way tract, and in part with the east line of a called 19.54 acre tract (described as "Tract 8") conveyed to Masonwood HP, Ltd., in Document No. 2021186700 (O.P.R.T.C.T.), N27°57'32"E, a distance of **60.09** feet to a calculated point for the northwest corner hereof, said point being in the common line of said 0.974 acre tract and said 19.54 acre tract, from which a 5/8-inch iron rod found for the northwest corner of said 0.974 acre tract, being in the east line of said 19.54 acre tract, and being an angle point in the west line of said 7.9270 acre tract, bears, N27°57'32"E, a distance of 319.97 feet;

THENCE, over and across said 0.974 acre tract, S74°06'49"E, a distance of **113.72** feet to a calculated point for the northeast corner hereof, said point being in the common line of said 0.974 acre tract and said 7.9720 acre tract, from which a 5/8-inch iron rod found for the northeast corner of said 0.974 acre tract, being an angle point in the west line of said 7.9720 acre tract, bears, N28°05'06"E, a distance of 323.38 feet;

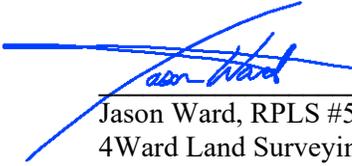
THENCE, with the common line of said 0.974 acre tract and said 7.9720 acre tract, S28°05'06"W, a distance of **56.66** feet to the **POINT OF BEGINNING** and containing 0.1489 Acre (6,486 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000098841287. See attached sketch (reference drawing: 01707_WLE_3.dwg.)

References:

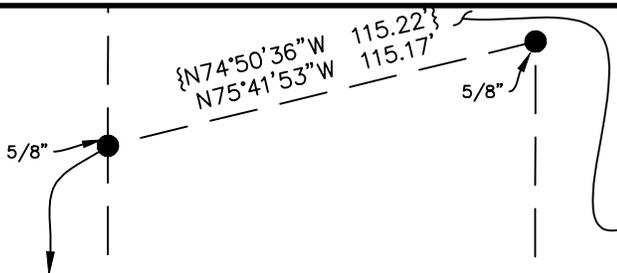
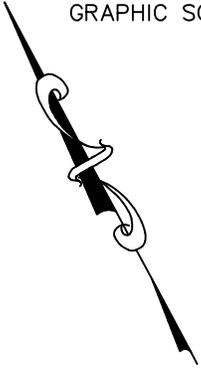
TCAD Parcel #109963
COA Grid #WU24



4/1/2024

Jason Ward, RPLS #5811
4Ward Land Surveying, LLC





LAKE TRAVIS
INDEPENDENT
SCHOOL DISTRICT
CALLED 7.9720 ACRES
DOC. NO. 2023104249
O.P.R.T.C.T.

WTF
HARRELL PROPERTY
MANAGEMENT, LLC
CALLED 0.974 ACRES
DOC. NO. 2014101366
O.P.R.T.C.T.

MASONWOOD HP, LTD
CALLED 19.54 ACRES
("TRACT 8")
DOC. NO. 2021186700
O.P.R.T.C.T.

{N28°48'09"E 380.25'}
N27°57'32"E 380.06'
319.97'

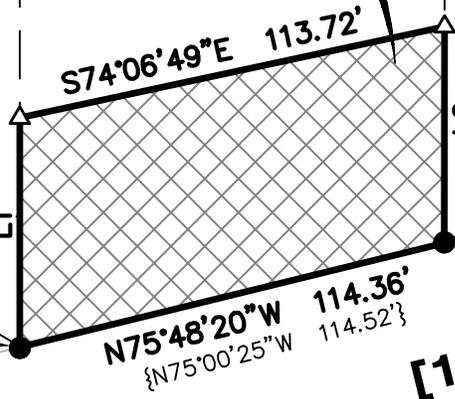
323.38'
N28°05'06"E 380.04'
{N28°55'00"E 380.10'}
(N28°54'01"E 380.00')

**WILLIAM
MCINTIRE
SURVEY NO. 91
ABSTRACT
NO. 533**

WATER LINES
EASEMENT
0.1489 ACRE(S)
6,486 SQUARE FEET

STATE OF TEXAS
CALLED 0.445 ACRE
RIGHT-OF-WAY
DEDICATION
DOC. NO. 2022119877
O.P.R.T.C.T.

FROM WHICH A
1/2" IRON ROD
FOUND BEARS
S01°31'22"E, 1.56'



P.O.B.
GRID N: 10,077,537.54
GRID E: 3,024,006.82

CALLLED 0.050 ACRE
STATE OF TEXAS
VOL. 4746, PG. 1980
R.P.R.T.C.T.

**0.1489 ACRE
WATER LINES
EASEMENT
City of Austin,
Travis County, Texas**



328
PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	4/1/2024
Project:	01707
Scale:	1" = 50'
Reviewer:	DV
Tech:	CC
Field Crew:	SV/JJ
Survey Date:	JUL. 2023
Sheet:	1 OF 2

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N27°57'32"E	60.09'
L2	S28°05'06"W	56.66'
L3	S75°48'20"E	30.74'

[1]
FM 3238
(AKA HAMILTON POOL
ROAD, R.O.W. VARIES)

LEGEND	
	EASEMENT LINE
	EXISTING PROPERTY LINES
	EXISTING EASEMENTS
	1/2" IRON ROD FOUND (UNLESS NOTED)
	TXDOT TYPE I CONCRETE MONUMENT FOUND
	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
R.P.R.T.C.T.	REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS
TCAD	TRAVIS COUNTY APPRAISAL DISTRICT
P.O.B.	POINT OF BEGINNING
(.....)	RECORD INFORMATION PER ADJOINING DEEDS/PLAT
{.....}	RECORD INFORMATION PER SUBJECT DEEDS



Jason Ward
4/1/2024

NOTES:

- 1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000098841287.
- 2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

TCAD PARCEL #109963
COA GRID #WU24

0.1489 ACRE
WATER LINES
EASEMENT
City of Austin,
Travis County, Texas

 A Limited Liability Company 329 PO Box 90876, Austin Texas 78709 INFO@4WARDLS.COM (512) 537-2384 TBPELS FIRM #10174300	Date:	4/1/2024
	Project:	01707
	Scale:	N/A
	Reviewer:	DV
	Tech:	CC
	Field Crew:	SV/JJ
	Survey Date:	JUL. 2023
Sheet:	2 OF 2	



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-07 Determining that Certain Property Containing 2.6928 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings

RECOMMENDED ACTION

Approve Resolution No. 101624-07 Determining that Certain Property Containing 2.6928 Acres of Land is Needed for the Construction, Operation, and Maintenance of a Public School and Authorizing the Institution of Eminent Domain Proceedings.

RATIONALE

The Board has previously found and determined that public convenience and necessity require the acquisition of certain real property owned by John Craig Hert for the construction of a school facility. The Board has already authorized the Superintendent, or his designee, to make an offer to the owner for the acquisition based on its appraised value. The Superintendent and his designees are continuing their attempts to negotiate with the owner for the purchase of the property and/or property rights as applicable. However, in the event the District cannot successfully negotiate the acquisition based on the appraised value, the District will need to exercise its right to acquire the property through eminent domain. This resolution provides the District the authority to take such action in the event direct negotiations with the landowner are not successful.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services

ATTACHMENTS

Resolution No. 101642-07

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-07

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT DETERMINING THAT CERTAIN PROPERTY CONTAINING APPROXIMATELY 2.6928 ACRES OF LAND IS NEEDED FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF A PUBLIC SCHOOL AND AUTHORIZING THE INSTITUTION OF EMINENT DOMAIN PROCEEDINGS.

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has found a public use and necessity for the acquisition of certain property, as stated herein and for the purposes stated herein; and

WHEREAS, due to the growing population within Lake Travis Independent School District and in order to meet the needs of this population and to fulfill the District's obligation to provide public education as mandated by Chapter 11 of the Texas Education Code, the Board of Trustees has found and determined that it is necessary to construct additional public school improvements within the District; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has found and determined that public convenience and necessity require the acquisition of real property in the tract(s) of land herein described to permit the construction of public-school improvements and related infrastructure; and

WHEREAS, the Board of the Trustees of the Lake Travis Independent School District has found and determined that the acquisition of real estate to construct additional public-school improvements will serve the public purpose of promoting public education; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value;

WHEREAS, the Board of Trustees of the Lake Travis Independent School District, through its duly authorized representatives, is attempting to negotiate with the owner of the

property for the purchase of the property for the purpose stated herein; and

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District that, should the Superintendent, or his designees, be unable to purchase from the landowner(s) of the property herein described, the Superintendent, acting through his staff or other authorized designee, is hereby authorized to bring eminent domain proceedings on behalf of the Lake Travis Independent School District under applicable provisions of law, whether provided by Section 11.155 of the Texas Education Code, as amended, Chapter 21 of the Texas Property Code, or by any other provision of law, against the owner or owners of the property, to-wit:

John Craig Hert and any other party who may own an interest in the Property.

Said owner or owners being the owners of the property described in the attached Exhibit A, incorporated herein for all purposes.

Adopted this ____ day of _____, 2024 by the Board of Trustees of the Lake Travis Independent School District.

Erin Archer, Board President

Keely Cano, Board Secretary

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 2.6928 ACRES (117,296 SQUARE FEET) OUT OF THE JOSHUA B. SHARPLESS SURVEY NO. 35, ABSTRACT NO. 2124, IN TRAVIS COUNTY, TEXAS, AND BEING OUT OF AND A PORTION OF THAT CALLED 45.010 ACRES TRACT CONVEYED TO JOHN CRAIG HERT IN DOCUMENT NO. 2000096670 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), SAID 2.6928 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

BEGINNING, at a cotton gin spindle found in asphalt, being the southeast corner of a called 0.74 acre tract described as "Tract 2", conveyed to Lake Travis Independent School District in Document No. 2018078098 (O.P.R.T.C.T.), being in the east line of said Hert tract, being in the west line of a called 48.438 acre tract described as "Tract 9", conveyed to McIntock Properties, LLC in Document No. 2021167153 (O.P.R.T.C.T.), for the northeast corner and **POINT OF BEGINNING** hereof, from which a cotton gin spindle found in asphalt in the west line of said McIntock Properties tract and being the northeast corner of said 0.74 acre tract and the southeast corner of a called 117.07 acre tract conveyed to Lake Travis Independent School District in Document No. 2017111944 (O.P.R.T.C.T.), bears, N04°55'00"E, a distance of 70.00 feet;

THENCE, with the common line of said Hert tract and said McIntock Properties tract, **S04°55'00"W**, a distance of **251.44** feet to a 1/2-inch iron rod with "4Ward Boundary" cap set for the southeast corner hereof, being an angle point in the east line of a called 43.286 acre tract conveyed to Lake Travis Independent School District in Document No. 2007228271 (O.P.R.T.C.T.), from which a 1/2-inch iron rod with "4Ward Boundary" cap set for an angle point in the common line of said 43.286 acre tract and said McIntock Properties tract bears, S04°55'00"W, a distance of 33.40 feet;

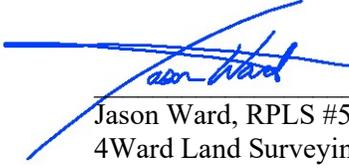
THENCE, leaving the common line of said Hert tract and said McIntock Properties tract, with the common line of said Hert tract and said 43.286 acre tract the following four (4) courses and distances:

- 1) **N84°58'11"W**, a distance of **463.63** feet to a to a 1/2-inch iron rod with "4Ward Boundary" cap set for an angle point in the east line of said 43.286 acre tract and for the southwest corner hereof,
- 2) **N05°06'03"E**, a distance of **265.87** feet to a to a 1/2-inch iron rod with "4Ward Boundary" cap set for an angle point in the east line of said 43.286 acre tract, the southwest corner of said 0.74 acre tract and for the northwest corner and non-tangent point of curvature hereof, from which a 1/2-inch iron rod with "4Ward Boundary" cap set for the northwest corner of said 0.74 acre tract and an angle point in the east line of said 43.286 acre tract bears, N05°06'03"E, a distance of 71.38 feet,
- 3) Along the arc of a curve to the left, whose radius is **785.00** feet, whose arc length is **148.24** feet and whose chord bears **S79°33'00"E**, a distance of **148.02** feet to a 1/2-inch iron rod with "4Ward Boundary" cap set in the common line of said Hert tract and said 43.286 acre tract, for an angle point hereof,

- 4) **S84°53'19"E**, a distance of **315.45** feet to the **POINT OF BEGINNING** and containing 2.6928 Acres (117,296 Sq. Ft.) of land more or less.

NOTE:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000102170438. See attached sketch (reference drawing: 01495_HERT TRACT.dwg)


2/26/24
Jason Ward, RPLS #5811
4Ward Land Surveying, LLC



0 100 200



50 150
GRAPHIC SCALE: 1" = 100'

CALLLED 117.07 ACRES
LAKE TRAVIS INDEPENDENT
SCHOOL DISTRICT
DOC. NO. 2017111944
O.P.R.T.C.T.

SURVEY CONTROL POINT
GRID N: 10,097,838.06
GRID E: 3,010,307.68
ELEV.= 1090.98'

((N05°06'03"E
71.38'))
N05°06'03"E
71.38'

((C1))
C1

[A]

((S84°53'20"E 315.33'))
S84°53'19"E 315.45'

60D NAIL
IN ASPHALT

S04°55'07"W 15.79'

[B]

N49°05'55"E 2,626.44'

((S05°00'50"W 70.00'))
S04°55'00"W 70.00'

REMAINDER OF A
CALLLED 45.010 ACRES
JOHN CRAIG HERT
DOC. NO. 2000096670
O.P.R.T.C.T.

P.O.B.
GRID N: 10,096,118.56
GRID E: 3,008,322.72

CALLLED 48.438
ACRES
(TRACT 9)
MCLINTOCK
PROPERTIES, LLC.
DOC. NO.
2021167153
O.P.R.T.C.T.

2.6928 ACRE(S)
117,296 SQUARE FEET

N05°06'03"E 265.87'

S04°55'00"W 251.44'

N84°58'11"W 463.63'
(((N84°58'11"W 461.87'))))

CALLLED 43.286 ACRES
LAKE TRAVIS INDEPENDENT
SCHOOL DISTRICT
DOC. NO. 2007228271
O.P.R.T.C.T

[A]
CALLLED 0.74 ACRE
"TRACT 2"
LAKE TRAVIS
INDEPENDENT
SCHOOL DISTRICT
DOC. NO. 2018078098
O.P.R.T.C.T.

[B]
CALLLED 86.823 ACRES
(TRACT 10)
MCLINTOCK
PROPERTIES, LLC.
DOC. NO. 2021167153
O.P.R.T.C.T.

APPROXIMATE
LOCATION OF
SURVEY LINE

S00°07'21"W 250.86'
(((S00°07'36"W 250.88'))))
(((S01°45'12"W 250.88'))))
[[S01°43'21"W 250.86']]

60D NAIL
IN ASPHALT



BOUNDARY SURVEY OF 2.6928 ACRES Spicewood, Travis County, Texas



A Limited Liability Company

335 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	2/26/2024
Project:	01495
Scale:	1" = 100'
Reviewer:	JB
Tech:	JG
Field Crew:	CG/RT
Survey Date:	SEP. 2022
Sheet:	1 OF 2

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S04°55'00"W	33.40'

CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
C1	785.00'	148.24'	10°49'10"	S79°33'00"E	148.02'

RECORD LINE TABLE		
LINE #	DIRECTION	LENGTH
((L1))	S04°55'31"W	34.83'

CURVE TABLE					
CURVE #	RADIUS	LENGTH	DELTA	BEARING	DISTANCE
((C1))	785.00'	148.24'	10°49'11"	S79°33'00"E	148.02'

LEGAL DESCRIPTION:

BEING 2.6928 ACRES OUT OF THE JOSHUA B. SHARPLESS SURVEY NO. 35, ABSTRACT NO. 2124, IN TRAVIS COUNTY, TEXAS, AND BEING OUT OF AND A PORTION OF THAT CALLED 45.010 ACRES TRACT CONVEYED TO JOHN CRAIG HERT IN DOCUMENT NO. 2000096670 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.).

BEARING BASIS:

ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83, ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000102170438.

SURVEY CONTROL:

CONTROL FOR THIS SURVEY IS BASED ON A 1/2" IRON ROD WITH "4WARD CONTROL" CAP SET, GRID COORDINATES (STATE PLANE TEXAS CENTRAL - 4203) AND ELEVATIONS (NAVD88) SHOWN HEREON WERE COMPUTED FROM NGS O.P.U.S. SOLUTION REPORT DERIVED FROM 4WARD STATIC DATA COLLECTED JULY 25, 2022.

FLOODPLAIN NOTE:

THIS PROPERTY IS LOCATED WITHIN ZONE 'X', AREAS OF MINIMAL FLOOD HAZARD, AS SHOWN ON F.I.R.M. MAP NO. 48453C0380J, TRAVIS COUNTY, TEXAS AND INCORPORATED AREAS, MAP REVISED JANUARY 22, 2020.

THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

LEGEND	
	PROPERTY LINE
	EXISTING PROPERTY LINES
	1/2" IRON ROD WITH "4WARD BOUNDARY" CAP SET
	1/2" IRON ROD FOUND (UNLESS NOTED)
	IRON ROD WITH ILLEGIBLE CAP FOUND (UNLESS NOTED)
	NAIL FOUND AS NOTED
	COTTON SPINDLE FOUND
	SURVEY CONTROL POINT
P.O.B.	POINT OF BEGINNING
DOC. NO.	DOCUMENT NUMBER
R.O.W.	RIGHT-OF-WAY
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
((.....))	RECORD INFORMATION PER DEED DOC. NO. 2018078098
((.....))	RECORD INFORMATION PER DEED DOC. NO. 2007228271
((.....))	RECORD INFORMATION PER DEED DOC. NO. 2000096670
[[.....]]	RECORD INFORMATION PER DEED DOC. NO. 2021167153

SURVEYOR'S CERTIFICATE:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WAS ACTUALLY MADE UPON THE GROUND UNDER MY DIRECTION AND SUPERVISION ON THE DATE SHOWN.

2/26/2024

JASON WARD, R.P.L.S.
TEXAS REGISTRATION NO. 5811
JWARD@4WARDLS.COM

DATE



**BOUNDARY SURVEY
OF 2.6928 ACRES
Spicewood,
Travis County, Texas**



336 PO Box 90876, Austin Texas 78709
INFO@4WARDLS.COM (512) 537-2384
TBPELS FIRM #10174300

Date:	2/26/2024
Project:	01495
Scale:	1" = 100'
Reviewer:	JB
Tech:	JG
Field Crew:	CG/RT
Survey Date:	SEP. 2022
Sheet:	2 OF 2



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-08 Authorizing the Negotiation and Execution of Possession and Use Agreements for Public Education Purposes with Additional Payment of Independent Consideration

RECOMMENDED ACTION

Approve Resolution No. 101624-08 Authorizing the Negotiation and Execution of Possession and Use Agreements for Public Education Purposes with Additional Payment of Independent Consideration.

RATIONALE

The District is in the process of purchasing and/or acquiring through eminent domain, as necessary, certain easements and fee simple tracts of land from various landowners that are necessary for the construction of Elementary School #8. While the District continues the negotiations and/or eminent domain process, the District may have a need to negotiate with one or more of the landowners a Possession and Use Agreement that would allow the District access to and control of the land prior to the transfer of ownership to the District. The Possession and Use Agreements would also allow for the payment of independent consideration of fair value to the landowners as consideration for the benefit of early access and use by the District. The Administration requests authority to negotiate and execute these Possession and Use Agreements as deemed necessary by the Superintendent for the specifically identified tracts listed in the resolution.

BUDGET PROVISIONS

2023 Bond Program

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services

ATTACHMENTS

Resolution No. 101642-08

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-08

A RESOLUTION OF THE BOARD OF TRUSTEES OF LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT AUTHORIZING NEGOTIATION AND EXECUTION OF POSSESSION AND USE AGREEMENTS FOR PUBLIC EDUCATION PURPOSES WITH ADDITIONAL PAYMENT OF INDEPENDENT CONSIDERATION

WHEREAS, the Board of Trustees of the Lake Travis Independent School District has found a public use and necessity for the acquisition of certain property, as stated herein and for the purposes stated herein; and

WHEREAS, due to the growing population within Lake Travis Independent School District and in order to meet the needs of this population and to fulfill the District's obligation to provide public education as mandated by Chapter 11 of the Texas Education Code, the Board of Trustees has found and determined that it is necessary to construct additional public school improvements within the District and it is necessary for the Board to acquire certain real property in the tract(s) of land herein described to accomplish this public purpose; and

WHEREAS, the Board of the Trustees of Lake Travis Independent School District has authorized the Superintendent, or his designee, to make an offer to the owner of the property described herein for the purchase of the same based upon its appraised value and/or has authorized the Superintendent, or his designee to bring eminent domain proceedings on behalf of the District in order to acquire the needed property; and

WHEREAS, the time necessary to begin and complete the construction project(s) of the needed educational facilities necessitates that the District pursue negotiation and execution of Possession and Use Agreements with one or more of the current landowners prior to the acquisition of the tract(s) by the District;

WHEREAS, the Board finds that the expenditure of public funds in the form of an additional payment of independent consideration to gain possession and access to the tract(s)

prior to the District's acquisition serves the public purpose of ensuring that the school facilities can be constructed within the necessary timeline; sufficient control over the expenditure remains with the Board and its designees; and there is a clear benefit of return to the District in the form of earlier access and possession of the land.

NOW THEREFORE, be it resolved by the Board of Trustees of the Lake Travis Independent School District that, the Superintendent, acting through his staff and other authorized designee(s), is hereby authorized to negotiate and execute as necessary a Possession and Use Agreement for Public Education Purposes with Additional Payment of Independent Consideration for any of the following tracts of land as deemed necessary by the Superintendent:

Location: A tract of land containing approximately 0.8579 acre (37,372 square feet) out of the William McIntire Survey No. 91, Abstract No. 533, in Travis County, Texas located on Hamilton Pool Road.

Location: A tract of land containing approximately 0.4145 acre (18,055 square feet) out of the John Keller Survey No. 25, Abstract No. 2169, in Travis County, Texas located on Grenadier Drive.

Location:

TRACT 1: A tract of land containing approximately 0.0523 acre (2,279 square feet) out of the WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road.

TRACT 2: A tract of land containing approximately 0.1489 ACRE (6,486 square feet) out of the WILLIAM MCINTIRE SURVEY NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road.

Location:

TRACT 1: Being approximately 0.0372 acre of land, more or less, out of Lot 94, Block N, PROVENCE PHASE 1 SECTION 4A, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Document No. 202200255, Official Public Records, Travis County, Texas.

TRACT 2: Being approximately 0.0143 acre of land, more or less, out of Lot 94, Block N, PROVENCE PHASE 1 SECTION 4A, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Document No. 202200255, Official Public Records, Travis County, Texas.

TRACT 3: Being approximately 0.2660 acre of land, more or less, out of the WM. McINTIRE SURVEY, NO. 91, ABSTRACT NO. 533, in Travis County, Texas located on Hamilton Pool Road.

TRACT 4: Being approximately 0.4636 acre of land, more or less, out of the WM. McINTIRE SURVEY, NO. 91, ABSTRACT NO. 533, in Travis County, Texas, located on Hamilton Pool Road.

Adopted this 16th day of October, 2024 by the Board of Trustees of the Lake Travis Independent School District.

Erin Archer, Board President

Keely Cano, Board Secretary



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Selection of American Constructors as Contractor for JOC #23-125 for Lake Travis High School Annex Door Modifications

RECOMMENDED ACTION

Approve the selection of American Constructors for JOC #23-125 for the Lake Travis High School Annex door modification project.

RATIONALE

To approve the delivery method for several LTHS Annex Door Modifications related improvements and the pricing for the project. Job Order Contracting (JOC) is being recommended for this specific project and the selection of American Constructors as the General Contractor. It is expected that the contract with American Constructors for this project will exceed \$100,000. According to Board Policy CV (LOCAL), the Board must approve construction contracts valued at or above \$100,000.

The Cost of work for this JOC includes the replacement of doors, hardware and/or install access controls at several locations.

BUDGET PROVISIONS

2023 Bond Program - \$165,716

RESOURCE PERSONNEL

Robert Winovitch – Director of Facilities and Construction
Pam Sanchez – Assistant Superintendent of Business Services
Cristy Soares – Director of Purchasing

ATTACHMENTS

Proposal from American Constructors

MEETING DATE

October 16, 2024



PROPOSAL

Date: 09/27/24

Owner: Lake Travis ISD
16101 Hwy 71, Bldg B
Austin, TX 78738

Contractor: American Constructors
11900 West Parmer Lane
Cedar Park, Texas 78613
JOC Contract #21-021

Project: LTHS Annex Door Modifications

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Scope of Work Includes:

1. Replace doors at Recital hall & modify doors per plan for new electronic hardware
2. Replace door hardware per attached plan
3. Connect new electronic hardware to access control system
4. Install conduits as required for access controls
5. Paint conduits and doors as required

List of Plans / Specifications:

LTHS Annex Door Modification Plan

Exclusions / Clarifications

1. Excludes testing, removal or abatement of existing hazardous materials
2. Excludes permitting and material testing
3. Excludes moving of existing furniture, fixtures and equipment.
4. Contractor is not responsible for any FF&E left in the work area
5. Relocation or repair of underground utilities that are not shown
6. All work during normal business hours

Total Amount of Proposal

\$165,716

Proposal is valid for 30 days from the date listed. Proposal assumes all areas will be available so work can proceed, uninterrupted to completion. All work to be done during normal hours unless otherwise noted in the proposal.

Accepted by:

Signature

Date

Printed name

Title

Item	Description	Amount
1	Door hardware & modifications	\$63,882
2	Access Control	\$29,960
3	Electrical connections and pathways	\$18,600
4	Painting	\$12,480
5	Repair of existing finishes	\$6,840
6	Supervision	\$9,270
7	Hardware & unforeseen conditions allowance	\$10,000
	Subtotal	\$151,032
	Fee	\$7,552
	Subtotal	\$158,584
	Bonds & Insurance	\$7,132
	Total	\$165,716

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AGENDA ITEM ACTION SHEET

AGENDA ITEM

2024-2025 Budget Amendment #1-General Operating Fund

RECOMMENDED ACTION

Approve the 2024-2025 Budget Amendment #1 to the General Operating Fund as presented.

RATIONALE

The general operating revenue budget amendment includes:

- Decrease to local tax revenue of \$1,000,000 due to protest settlements and additional exemptions and refunds filed after the certification of property values in July.
- Increase in Available School Fund of \$200,000 to account for an increase of \$22.20 per prior year student in attendance.

The general operating expenditures budget amendment includes:

- Increase to State Recapture of \$1,200,000 due to a decrease in enrollment from 11,315 (budgeted) to an estimated fall snapshot enrollment of 11,000.
- Increase in payroll costs of \$300,000 due to the addition of Special Education Teachers (3) and Aides (8) needed to cover students served.
- Decrease in payroll costs of \$300,000 due to the transfer of certain general fund positions to federal funds.

The overall impact to the General Fund is an increase in the budget deficit of \$2,000,000, resulting in an estimated deficit of \$6,000,000 for the 2024-2025 fiscal year.

BUDGET PROVISIONS

2024-2025 General Operating Budget

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services
Brad Goerke – Director of Finance

ATTACHMENTS

2024-2025 Budget Amendment #1 – General Operating Fund

MEETING DATE

October 16, 2024

Lake Travis ISD
General Operating Fund-Budget Amendment #1
2024-2025

		2024-2025	Recommended	2024-2025
<u>Revenues</u>		<u>Original Budget</u>	<u>Amendments</u>	<u>Amended Budget</u>
5711	Current Year Taxes	\$ 140,500,000	\$ (1,000,000)	\$ 139,500,000
5700	Other Local Revenues	\$ 7,650,000	\$ -	\$ 7,650,000
5800	State Program Revenues	\$ 14,126,764	\$ 200,000	\$ 14,326,764
5900	<u>Federal Revenue</u>	\$ 158,500	\$ -	\$ 158,500
	TOTAL REVENUES	\$ 162,435,264	\$ (800,000)	\$ 161,635,264

<u>Expenditures</u>				
11	Instruction	\$ 67,261,000	\$ 300,000	\$ 67,561,000
12	Instructional Resources	\$ 1,071,983	\$ -	\$ 1,071,983
13	Staff Development	\$ 1,400,016	\$ -	\$ 1,400,016
21	Instructional Administration	\$ 2,361,963	\$ -	\$ 2,361,963
23	School Administration	\$ 5,828,584	\$ -	\$ 5,828,584
31	Guidance & Counseling	\$ 5,784,061	\$ (300,000)	\$ 5,484,061
32	Social Work Services	\$ 475,689	\$ -	\$ 475,689
33	Health Services	\$ 1,087,609	\$ -	\$ 1,087,609
34	Transportation	\$ 4,846,547	\$ -	\$ 4,846,547
35	Food Service	\$ 122,601	\$ -	\$ 122,601
36	Co-Curricular Activities	\$ 2,745,259	\$ -	\$ 2,745,259
41	General Administration	\$ 4,325,194	\$ -	\$ 4,325,194
51	Plant & Maintenance	\$ 12,678,467	\$ -	\$ 12,678,467
52	Safety & Security	\$ 1,696,927	\$ -	\$ 1,696,927
53	Non-Instructional Data Processing	\$ 3,136,783	\$ -	\$ 3,136,783
61	Community Services	\$ 528,009	\$ -	\$ 528,009
71	Debt Service	\$ 275,000	\$ -	\$ 275,000
81	Facilities/Construction	\$ 40,867	\$ -	\$ 40,867
91	State Transfers (Recapture)	\$ 49,786,945	\$ 1,200,000	\$ 50,986,945
92	Incremental WADA Costs	\$ -	\$ -	\$ -
93	Sp. Ed. Transfer Payments	\$ 66,760	\$ -	\$ 66,760
95	JJAEP Transfer Payments	\$ 15,000	\$ -	\$ 15,000
99	<u>Travis County Appraisal District</u>	\$ 1,050,000	\$ -	\$ 1,050,000
	TOTAL EXPENDITURES	\$ 166,585,264	\$ 1,200,000	\$ 167,785,264

<u>Other Resources and (Uses)</u>				
7990	Other Resources	\$ 150,000		\$ 150,000
8990	<u>Other Uses</u>	\$ -		\$ -
	TOTAL RESOURCES & USES	\$ 150,000	\$ -	\$ 150,000

	Excess (Deficiency) Of Revenues Over			
1200	Expenditures	\$ (4,000,000)	\$ (2,000,000)	\$ (6,000,000)
3000	Beginning Fund Balance-9/1	\$ 41,663,675		\$ 41,663,675
3600	Ending Fund Balance-8/31	\$ 37,663,675		\$ 35,663,675

Note: The general operating revenue budget amendment includes a decrease to local tax revenue of \$1,000,000 due to protest settlements and additional exemptions and refunds filed after the certification of property values in July, and an increase in Available School Fund of \$200,000 to account for an increase of \$22.20 per prior year student in attendance. The general operating expenditures budget amendment includes an increase to State Recapture of \$1,200,000 due to a decrease in enrollment from 11,315 (budgeted) to an estimated fall snapshot enrollment of 11,000, an increase in payroll costs of \$300,000 due to the addition of Special Education Teachers (3) and Aides (8) needed to cover students served, and a decrease in payroll costs of \$300,000 due to the transfer of certain general fund positions to federal funds.



AGENDA ITEM ACTION SHEET

AGENDA ITEM

September 18, 2024 Regular Board Minutes

RECOMMENDED ACTION

For approval with Consent Agenda.

RATIONALE

Minutes for each Board meeting shall be approved and on file in the Superintendent's office.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Suzanne Kelbaugh - Executive Assistant to the Superintendent of Schools

ATTACHMENTS

September 18, 2024 Regular Board Meeting Minutes

MEETING DATE

October 16, 2024

Minutes of Board Meeting

The Board of Trustees

Lake Travis Independent School District

A meeting of the Board of Trustees of Lake Travis Independent School District was held on September 18, 2024, beginning at 6:00 p.m. in the Educational Development Center, Live Oak Room, 607 RR 620 North, Austin, Texas 78734.

Call to Order

President Erin Archer called the meeting to order at 6:02 p.m.

Quorum Determination

Trustees in attendance were John Aouelle, Erin Archer, Keely Cano, Lauren White, Kim Flasch and Rob Aird. Trustee Phillip Davis arrived at 8:57p.m.

Pledge of Allegiance and Moment of Silence

Laura Keogh led the Pledge of Allegiance. A moment of silence was then observed.

Recognition

- **Cameron Chalmers - Dave Campbell's Texas Football 2024 Community Leader Award Recipient**

Marco Alvarado, Executive Director of Communications & Community Relations, presented Dave Campbell's Texas Football recently announced Lake Travis High School Athletic Trainer Cameron Chalmers is one of 10 recipients of the 2024 Community Leader Award presented by Community Coffee.

Now in their second year of the award, Dave Campbell's Texas Football and Community Coffee continue their partnership to celebrate influential community leaders across the great state of Texas. As a part of the recognition, Cameron and nine other leaders across Texas will be honored as Community Leaders of the Week, which includes a commemorative football and gift package, as well as a \$500 donation to the community leader's school. The Community Leaders of the Week will be honored during an interview, with one interview being revealed each week during the Texas high school football season.

Additionally, there will be voting open to all communities starting in November to name the Community Leader of the Year. All 10 communities will have two weeks to vote for their nominee to be named the Community Leader of the Year. The winner will receive a \$1,000 donation to support their school, thanks to the support of Community Coffee.

Special Recognition.

- **Lake Travis Education Foundation (LTEF) Big Check Presentation**

The Lake Travis Education Foundation (LTEF) is a nonprofit organization that supports the Lake Travis ISD mission to educate all students through a comprehensive curriculum. LTEF is a vital component of the Lake Travis ISD. They raise the funds necessary to add enrichment programs for all grade levels, and instructional enhancement tools such as technology for the classrooms, that are not considered core requirements under Texas Education Agency (TEA) guidelines.

Tonya Boggan, 2023 - 2024 President of the LTEF will present a check to the LTISD Trustees for Lake Travis ISD in the amount of \$450,000.

LTEF Board of Directors for the 2023-2024 School Year:

President: Tonya Boggan

Past President: Jeff Haley

President Elect: Kyle Morgan

Vice President: Annmarie Hatfield

Treasurer: Bridget Dalrymple

Secretary: Monica R. Hall-Porter, PhD

Directors:

Aimee Riebold

Amy Handken

Andrea Steimle

Anthony Eppert

Christy Black

Claire Kinnersley

Erin Warner

Gary Wolff

Geoff Land

Gina Dreesen

Jennifer Goff

Kris Devlin

Krystal Alvarado

Maureen Wentworth

Myles Naso

Natalie Kloss-Biagini

Sarah McAloon

Tom Wiri

Maureen Wentworth

Robert White

Sarah McAloon

Tracy Mendez

Robert White

Windsar Fields

Special Recognition.

Public Comments/Citizen Participation

1. Micheli Merriman – SPED Budget Cuts
2. Maria Bader – SPED Budget Cuts
3. Amaya Mendenhall – SPED
4. Camalene Churba – Taxes
5. Ashley Lindsey – SPED Cuts
6. Melissa Miller – TASB Study

Presentation / Discussion Items

• **Campus Presentation–Hudson Bend Middle School**

Laura Keogh, Principal of Hudson Bend Middle School, presented.

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

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

This item was for presentation/ discussion only; no action was requested.

- **Preliminary Design of the Lake Travis High School Cavalier Stadium Renovation and Women’s Field House Addition**

In December 2022, the Board approved a pool of architect and engineering professional service providers to support requirements for various professional services necessary for renovations, additions, alterations, and new construction capital projects for the Bond Programs.

On March 20, 2024, the Board selected Claycomb Architects for the design of the Lake Travis High School Cavalier Stadium Renovation and Women’s Field House Addition project. After several meetings with the District’s Facilities and Construction project management team, and campus and athletic program administrators and staff, the Claycomb architect and design team will present a preliminary design to the Board.

This item was for presentation/ discussion only; no action was requested.

- **Curriculum & Instruction Services – Career & Technical Education Update**

Lana Stone, CTE and Advanced Academics Coordinator, presented that Career and Technical Education includes courses, programs, assessments, services and supports that provide opportunities for students to demonstrate college and career readiness and earn postsecondary credit. The Texas Education Agency supports CTE through Industry Based Certifications, designated career clusters and program of study course alignments, and weighted funding. CTE also receives support through the Perkins Grant federal funds.

Curriculum and Instruction Services will provide an update of the following items:

CTE Programs of Study

Certifications, licensures

CCMR

PLTW Distinguished School

CTE Awards and Honors

This item was for presentation/ discussion only; no action was requested.

Erin Archer called for a break at 7:15 p.m. meeting called back in session at 7:26 p.m.

- **2024 – 2025 Enrollment Update**

Lake Travis ISD projects enrollment each year for the coming school year, staff accordingly and then monitors actual enrollment at the beginning of the year, adjusting staffing as needed. Current enrollments for the first three weeks of school are being presented tonight.

This item was for presentation/discussion only; no action was requested.

- **Staffing Update**

Susan Fambrough, Assistant Superintendent of Human Resources, and Pam Sanchez, Assistant Superintendent of Business Services, presented an update on staffing for the 2024-2025 school year.

This item was for presentation/ discussion only; no action was requested.

- **August 2024 Monthly Financial Reports - Statement of Revenues and Expenditures, Balance Sheet, Tax Statement, 2018/2023/2024 Capital Projects Report and Quarterly Investment Report**

Pam Sanchez, Assistant Superintendent of Business Services, presented the following documents:

1. Statement of Revenues and Expenditures- August 2024
2. Balance Sheet- August 2024
3. Tax Statement-August 2024
4. 2018 Capital Projects Report – August 2024
5. 2023 Capital Projects Report- August 2024
6. 2024 Capital Projects Report – August 2024
7. Quarterly Investment Report – August 2024

This item was for discussion/presentation only; no action was requested.

- **2023-2024 Annual Investment Report**

In accordance with Board Policy CDA (Local), a comprehensive report of the investment activity for the year is required to be presented to the Board annually.

This item was for discussion/presentation only; no action was requested.

- **Resolution No. 101624-01 Regarding Adoption of the Investment Strategy and Designation of Investment Officers**

School district investments in the State of Texas are governed by Chapter 2256 of the Texas Government Code (Public Funds Investment Act). All investments made by the District shall comply with the Public Funds Investment Act and all federal, state, and local statutes and regulations. The Board of Trustees must review its investment policy and strategies on an annual basis.

The administration recommends no changes to the Board Policy CDA (Local).

This item was for discussion only, action will be requested at the October 16, 2024, meeting.

- **Resolution No. 101624-02 Regarding Adoption of Authorized Broker/Dealer List**

Per Governmental Code 2256.025, the Board of Trustees is required annually to adopt a Resolution to approve a list of qualified brokers and dealers who are authorized to engage in investment transactions with the district. The attachment includes the list of approved firms with no changes being recommended.

This item was for discussion only, action will be requested at the October 16, 2024, meeting.

- **2024 Preliminary School FIRST Rating**

Lake Travis ISD has received its preliminary 2024 School Financial Integrity Rating System of Texas (FIRST) rating based on financial indicators per 19 Texas Administrative Code (TAC), Section 109.1001(e)(6). A school district's School FIRST rating is based upon an analysis of financial data for fiscal year ended August 31, 2023. If the district does not submit an appeal, the preliminary rating becomes final on September 7, 2024. Within two months of the release of the final ratings, each school district must announce and hold a public meeting to distribute a financial management report that explains the district's rating and its performance under each of the 21

indicators for the prior year. The first of two required published newspaper notices, to inform taxpayers of the meeting, may not be more than 30 days or less than 10 days prior to the public meeting in accordance with 19 TAC, Section 109.1005. The public meeting will take place at the regular scheduled meeting on October 16, 2024.

This item was for discussion only, a public hearing will be scheduled at the October 16, 2024, meeting.

Consideration Items

- **2024-2025 School Health Advisory Council Membership**

Potential committee list for 2024-2025 school year as proposed by the SHAC Board Selection Committee.

A **MOTION** was made by Trustee Keely Cano and seconded by Trustee John Aouelle to approve the 2024-2025 SHAC Committee as presented.

The motion passed by a vote of 6 - 0.

- **Construction Contracts Between Lake Travis ISD and Hellas Construction, Inc. for the Synthetic Turf Fields at the Baseball, Softball, Golf Practice and Multipurpose Field**

In April 2024, the District procured the services of Hellas Construction through BuyBoard RFP #737-24 for the District's Synthetic Turf Fields at the Baseball/Softball/Golf Practice/Multipurpose Field project. In May 2024, the District notified the Board of the purchase of these services. The parties have since negotiated A101 and A201 construction contracts for the project for a total contract sum of \$4,560,973. In accordance with CV (Local), for construction contracts valued at or above \$100,000, the Superintendent shall also submit the resulting contract to the Board for approval. The administration recommends approval of the contracts.

A **MOTION** was made by Trustee Rob Aird and seconded by Trustee Kelly Cano to approve the execution of the A101 and A201 construction contracts between Lake Travis ISD and Hellas Construction, Inc. for the Synthetic Turf Fields at the Baseball, Softball, Golf Practice and Multipurpose Field and authorize the Superintendent or designee to execute and amend, as necessary, the contracts.

The motion passed by a vote of 6- 0.

Trustee Phillip Davis arrived at 8:57 p.m. to the Board Meeting

- **Negotiations with Texas Department of Transportation Regarding Sale of Land Located at Hudson Bend Middle School**

The Texas Department of Transportation (TxDOT) is currently in the process of acquiring property for the state highway 620 expansion project. TxDOT has recently communicated to the District that property at the Hudson Bend Middle School site is to be acquired for the RM620 construction project improvement project. The project will also include the reconfiguration of The Cottage parking lot and septic drainage field. The recommended action would allow the Superintendent or designee to enter into negotiations with TxDOT to make offers contingent upon Board approval for the sale of property and conveyance of easements.

A **MOTION** was made by Trustee Keely Cano and seconded by Trustee Kim Flasch to approve the Superintendent or designee to negotiate, execute and amend, as necessary the sale of real property and

easement agreements between the Texas Department of Transportation and Lake Travis ISD located at Hudson Bend Middle School.

The motion passed by a vote of 7 - 0.

- **Request for Proposal (RFP) – Fleet Copiers and Service**

Under Section 44.031(a) of the Texas Education Code (TEC), all district contracts for the purchase of goods and services, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for a district:

1. Competitive bidding;
2. Competitive sealed proposals;
3. A request for proposals;
4. An interlocal contract.

Lake Travis ISD’s current contract with Xerox for fleet copiers and service will expire on September 30, 2024. The District issued an RFP on April 19, 2024 with a closing date of May 29, 2024, and anticipated award date of September 18, 2024 with Board approval. The District received nine responses. The evaluation team was comprised of three district employees, one employee from the Purchasing Department, one employee from the Technology Department and one employee from Business Services. Based on the evaluation criteria, the District recommends awarding the contract to Canon.

A MOTION was made by Trustee Lauren White and seconded by Trustee Phillip Davis to approve the award of the fleet copiers and service to Canon.

The motion passed by a vote of 7 - 0.

- **Agreement for the Provision of Nonstandard Retail Water Service Between Lake Travis ISD and West Travis County Public Utility Agency for HPR Elementary #8**

Non-Standard Water Service Agreement (NSSA) with the WTCPUA sets forth and more fully describes the conditions for water service listed in the SAL.

Article II establishes the terms and conditions for the Service Commitment for 14 LUEs of water service, including developing the school site in accordance with TCEQ Optional Enhanced water quality measures.

Article III obligates LTISD to construct specified water system improvements needed to bring water service to the school.

Article IV Conditions Precedent to Commencement of Facilities Construction or Service addresses LTISD’s obligation to pay reservation fees each year until the water meter is set. The payment of reservation fees is due December 2024. Per a telephone conversation with Jennifer Riechers, general manager of the WTCPUA, Section 4.2 regarding impact fees will be changed to reflect that LTISD does not have to pay impact fees.

A MOTION was made by Trustee Keely Cano and seconded by Trustee Phillip Davis to approve the Agreement for the Provision of Nonstandard Retail Water Service Between Lake Travis ISD and West Travis County Public Utility Agency for HPR Elementary #8 and authorize the Superintendent or his designee to execute the agreement.

The motion passed by a vote of 7 - 0.

- **Service Availability Letter from West Travis County Public Utility Agency for HPR Elementary #8**

The Service Availability Letter (SAL) is the WTCPUA response to the Service Extension Request for 14 LUEs of water service to the school. The SAL lists the conditions that the District has to meet to obtain a water meter for the school. The WTCPUA requires applicants for water service to agree to the conditions for water service by signing the SAL.

The first condition in the SAL is the District entering into a Non-Standard Water Service Agreement (NSSA) with the WTCPUA for 14 LUEs of domestic water service. The SAL is essentially an outline of the terms in the NSSA.

A MOTION was made by Trustee Keely Cano and seconded by Trustee Phillip Davis to approve the Service Availability Letter from West Travis County Public Utility Agency for HPR Elementary #8 and authorize the Superintendent or his designee to execute the letter.

The motion passed by a vote of 7 - 0.

- **Selection of White Construction as Contractor for the Construction Manager At-Risk for Lake Travis High School Cavalier Stadium Renovation and Women’s Field House Addition**

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

Lake Travis ISD issued a RFP for Construction Manager At-Risk (CMR) for the Cavalier Stadium renovation and Women’s Field House addition project on July 5, 2024, with a closing date of August 6, 2024 and an anticipated award date of September 18, 2024, with Board approval. The District received six responses.

General Contractor, White Construction, is in line for award based on total points scored and interview. Based on the evaluation criteria, the District recommends White Construction as CMR for Lake Travis High School Cavalier Stadium renovation and Women’s Field House addition project.

A MOTION was made by Trustee Kim Flasch seconded by Trustee Lauren White to approve the selection of White Construction as general contractor for the Lake Travis High School Cavalier Stadium renovation and Women’s Field House addition project and authorize the Superintendent or designee to negotiate and execute the contract.

The motion passed by a vote of 7 - 0.

- **Amendment to Guaranteed Maximum Price for CMR 23-10 the Lake Travis High School Agriculture Building Renovation and Addition Project**

At the August 2024 Board meeting, the Board approve execution of the contract documents between Zapalac Reed and Lake Travis ISD for the Lake Travis High School Agriculture Building Renovation and Addition Project. The Board also approved a Guaranteed Maximum Price for the project of \$7,557,418. The parties subsequently identified an error of \$20,000 in the calculation of the GMP amount. According to the terms of the contract, the Board must authorize any increase to the GMP. The parties have drafted an amendment of \$20,000 to the GMP for the project to adjust for the calculation error and request Board approval of a new GMP amount of \$7,577,418.

A **MOTION** was made by Trustee Phillip Davis seconded by Trustee Keely Cano to approve an amendment of \$20,000 to the Guaranteed Maximum Price for the Lake Travis High School Agriculture Building Renovation and Addition Project for a new GMP amount of \$7,577,418.

The motion passed by a vote of 7 - 0.

- **T-TESS Appraisal Calendar and Appraisal Roster**

The Texas Agency Commissioner’s Rules requires the District to establish a calendar for teacher appraisals that reflects the following guidelines:

1. Exclude observations in the three weeks after the day of completion of the T-TESS orientation in the school years when an orientation is required;
2. Exclude observations in the three weeks after the day of completion of the T-TESS orientation for teachers new to the District or the T-TESS evaluation system; and
3. Indicate a period for summative annual conferences that ends no later than 15 working days before the last day of instruction for students.

The attached calendar meets these requirements.

2024-2025 T-TESS Appraisal Calendar

Activity	Deadline
Annual Campus Orientation for All Teachers	August 2024
Orientation for Late Hires	Within first 3 weeks of hire date
First Day of Observations	September 16, 2024
Goal Setting Conferences and Development Plans Completed	October 16, 2024
End-of-Year Conference Period Begins	January 27, 2025
Last Day of Observations	May 9, 2025
End-of-Year Conference Period Ends	May 9, 2025
Summative Annual Appraisal Reports Completed	May 9, 2025
Evaluations Due to HR Office	June 12, 2025

The Texas Agency Commissioner’s Rules require that a list of qualified appraisers who may appraise teachers shall be approved by the Board of Trustees. The appraisers must meet the following criteria:

1. The teachers’ supervisor shall conduct the teacher’s appraisal and must hold a superintendent, midmanagement (principal), or supervisor certification, or must hold comparable certificates established by the State Board for Educator Certification.
2. An appraiser other than the teacher’s supervisor must be approved by the Board, hold a valid teaching certificate and have at least 5 years of teaching experience.

2024-2025 T-TESS Appraisal Roster

Site	Appraiser
Bee Cave Elementary	Kim Kellner Ashley Nauta Rida Ortego
Lake Pointe Elementary	Karen Reich Julianne Jenkerson
Lakeway Elementary	Linda Rawlings
Lake Travis Elementary	Sebastian Espinoza Stacey Brown
Rough Hollow Elementary	Angela Page Nicole Taylor
Serene Hills Elementary	Keegan Luedecke Lorraine Lopez
West Cypress Hills Elementary	Amy Russ Chareese Hatfield
Hudson Bend Middle School	Laura Keogh Clark Frederickson Brian Gill Tatiana Chavez
Lake Travis Middle School	Rebecca Hudson Keitha St. Clair Cristy Rizzoli
Bee Cave Middle School	Melanie Beninga Cody Redfern Chad Ouellette
Lake Travis High School	Debbie Garinger Sheri Remore Fela Mathy Ryan O'Donoghue Stuart Foreman Mason Whitfield Sandra Surdy Julie Haney
District Administrators	Angela Hrapchak Shannon Gill

A MOTION was made by Trustee Kim Flasch seconded by Trustee Phillip Davis to approve the appraisal calendar and roster of T-TESS certified administrators.

The motion passed by a vote of 7- 0.

Consent Agenda

- **TASB Policy Update 121 Affecting the Following Policies:**
 - CFB(LOCAL): ACCOUNTING - INVENTORIES**
 - CKE(LOCAL): SAFETY PROGRAM/RISK MANAGEMENT - SECURITY PERSONNEL**
 - CKEA(LOCAL): SECURITY PERSONNEL - COMMISSIONED PEACE OFFICERS**
 - CLB(LOCAL): BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT - MAINTENANCE**
 - CO(LOCAL): FOOD AND NUTRITION MANAGEMENT**
 - COA(LOCAL): FOOD AND NUTRITION MANAGEMENT - PROCUREMENT**
 - CRF(LOCAL): INSURANCE AND ANNUITIES MANAGEMENT - UNEMPLOYMENT INSURANCE**
 - CVA(LOCAL): FACILITIES CONSTRUCTION - COMPETITIVE BIDDING**
 - CVB(LOCAL): FACILITIES CONSTRUCTION - COMPETITIVE SEALED PROPOSALS**
 - DEA(LOCAL): COMPENSATION AND BENEFITS - COMPENSATION PLAN**
 - FD(LOCAL): ADMISSIONS**
 - FFI(LOCAL): STUDENT WELFARE - FREEDOM FROM BULLYING**
- **TASB Policy Update 122 Affecting the Following Policies:**
 - CQB(LOCAL): TECHNOLOGY RESOURCES - CYBERSECURITY**
 - CSA(LOCAL): FACILITY STANDARDS - SAFETY AND SECURITY**
 - DC(LOCAL): EMPLOYMENT PRACTICES**
 - EHB(LOCAL): CURRICULUM DESIGN - SPECIAL PROGRAMS**
 - EHBC(LOCAL): SPECIAL PROGRAMS - COMPENSATORY SERVICES AND INTENSIVE PROGRAMS**
 - EHBCA(LOCAL): COMPENSATORY SERVICES AND INTENSIVE PROGRAMS - ACCELERATED INSTRUCTION**
 - FEA(LOCAL): ATTENDANCE - COMPULSORY ATTENDANCE**
 - FFAC(LOCAL): WELLNESS AND HEALTH SERVICES - MEDICAL TREATMENT**
 - FFB(LOCAL): STUDENT WELFARE - CRISIS INTERVENTION**
 - FL(LOCAL): STUDENT RECORDS**
- **TASB Policy Update 123 Affecting the Following Policies:**
 - BBD(LOCAL): BOARD MEMBERS - TRAINING AND ORIENTATION**
 - BBFA(LOCAL): ETHICS - CONFLICT OF INTEREST DISCLOSURES**
 - CKC(LOCAL): SAFETY PROGRAM/RISK MANAGEMENT - EMERGENCY PLANS**
 - CKEA(LOCAL): SECURITY PERSONNEL - COMMISSIONED PEACE OFFICERS**
 - CQC(LOCAL): TECHNOLOGY RESOURCES - EQUIPMENT**
 - DCE(LOCAL): EMPLOYMENT PRACTICES - OTHER TYPES OF CONTRACTS**
 - DGBA(LOCAL): PERSONNEL-MANAGEMENT RELATIONS - EMPLOYEE COMPLAINTS/GRIEVANCES**
 - EEH(LOCAL): INSTRUCTIONAL ARRANGEMENTS - HOMEBOUND INSTRUCTION**
 - FNG(LOCAL): STUDENT RIGHTS AND RESPONSIBILITIES - STUDENT AND PARENT COMPLAINTS/GRIEVANCES**
 - GF(LOCAL): PUBLIC COMPLAINTS**
- **Add Policy GKG (LOCAL) – School Volunteer Program**
- **August 21, 2024 Board Meeting Minutes**

A **MOTION** was made by Trustee Kim Flasch seconded by Trustee Phillip Davis to approve the consent agenda items as presented.

The motion passed by a vote of 7 - 0.

Upcoming Meetings and Events

Board President Erin Archer announced the following upcoming meetings and events:

- October 16, 2024 – 6:00 p.m. Monthly Board Meeting, EDC
- November 20, 2024 – 6:00 p.m. Monthly Board Meeting, EDC
- December 11, 2024 – 6:00 p.m. Monthly Board Meeting, EDC

Closed Session

Trustees adjourned into Closed Session at 9:09 p.m., as permitted by Texas Government Code 551.001 et seq.

Section 551.074 - Personnel Matters

1. The Board will discuss the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of public employees or officials. (This may involve consultation with attorney as permitted under Section 551.071)

Section 551.072 - Deliberation Regarding Real Property

1. The Board will discuss the purchase, exchange, lease or value of real property. (This may involve consultation with attorney as permitted under section 551.071.)

Section 551.0821 - School Board: Personally Identifiable Information About a Public School Student

1. The Board will discuss personally identifiable information about a public school student.

Section 551.076 - Deliberation Regarding Security Devices or Security Audits; Closed Meeting. This chapter does not require a governmental body to conduct an open meeting to deliberate:

1. The deployment, or specific occasions for implementation of security personnel or devices.

Adjournment

There being no further action, the September 18, 2024 Board of Trustees' meeting adjourned at 10:50 p.m.

Erin Archer, President

Keely Cano, Secretary



AGENDA ITEM ACTION SHEET

AGENDA ITEM

2024-2025 T-TESS Appraisal Roster

RECOMMENDED ACTION

For approval with Consent Agenda.

RATIONALE

The Texas Agency Commissioner's Rules require that a list of qualified appraisers who may appraise teachers shall be approved by the Board of Trustees. The appraisers must meet the following criteria:

1. The teachers' supervisor shall conduct the teacher's appraisal and must hold a superintendent, midmanagement (principal), or supervisor certification, or must hold comparable certificates established by the State Board for Educator Certification.
2. An appraiser other than the teacher's supervisor must be approved by the Board, hold a valid teaching certificate and have at least two years' of teaching experience.

The attached list of appraisers meets these requirements.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Susan Fambrough - Assistant Superintendent of Human Resources

ATTACHMENTS

2024-2025 T-TESS Appraisal Roster

MEETING DATE

October 16, 2024



2024-2025 T-TESS Appraisal Roster

Site	Appraiser
Bee Cave Elementary	Kim Kellner Ashley Nauta Rida Ortego
Lake Pointe Elementary	Karen Reich Julianne Jenkerson
Lakeway Elementary	Linda Rawlings Kara Reeh
Lake Travis Elementary	Sebastian Espinoza Stacey Brown
Rough Hollow Elementary	Angela Page Nicole Taylor
Serene Hills Elementary	Keegan Luedecke Lorraine Lopez
West Cypress Hills Elementary	Amy Russ Chareese Hatfield
Hudson Bend Middle School	Laura Keogh Clark Frederickson Brian Gill Tatiana Chavez
Lake Travis Middle School	Rebecca Hudson Keitha St. Clair Cristy Rizzoli
Bee Cave Middle School	Melanie Beninga Cody Redfern Chad Ouellette
Lake Travis High School	Debbie Garinger Sheri Remore Fela Mathy Ryan O'Donoghue Stuart Foreman Mason Whitfield Sandra Surdy Julie Haney Adam Waddell
District Administrators	Angela Hrapchak Shannon Gill Amanda Prehn



	Stefani Vickery
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Pending: none



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-01 Regarding Adoption of the Investment Strategy and Designation of Investment Officers

RECOMMENDED ACTION

For approval with Consent Agenda.

RATIONALE

School district investments in the State of Texas are governed by Chapter 2256 of the Texas Government Code (Public Funds Investment Act). All investments made by the District shall comply with the Public Funds Investment Act and all federal, state, and local statutes and regulations. The Board of Trustees must review its investment policy and strategies on an annual basis.

The administration recommends no changes to the Board Policy CDA (Local).

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Brad Goerke – Director of Finance

ATTACHMENTS

1. Investment Strategy 2024-2025
2. Resolution No. 101624-01

MEETING DATE

October 16, 2024



Lake Travis Independent School District
Investment Strategy
2024-2025

Introduction

Investments in the State of Texas are governed by Chapter 2256 of the Texas Government Code. All investments made by Lake Travis ISD shall comply with the Public Funds Investment Act and all federal, state, and local statutes and regulations.

1. Investment policies should include the methods used to monitor the market price and include a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis.
2. The Board of Trustees must act upon an annual review of the District's investment policy and strategies.
3. Training requirements are required of the investment officers. Eight hours of training is required every two years.
4. A qualified representative of sellers of investments must review the District's investment policies.
5. Quarterly investment reports must be in accordance with generally accepted accounting principles and must include accrue interest and presented to the Board of Trustees.
6. A formal annual review of the quarterly reports by an independent auditor is necessary except for investments in pools, money market funds or depository bank investments.

Investment Policy and Strategy

Lake Travis ISD's investment policy requires focus on safety, liquidity and diversity. Investments are made in a manner that ensures the preservation of capital in the overall portfolio. The District's investments are sufficiently liquid to meet anticipated cash flow needs. Investments are diversified to reduce the risk of any one investment type. Internal controls exist to protect against losses of public funds arising from fraud, employee error, and misrepresentation by a third party.

Investment strategy is applied to each major fund type. Investment strategies for operating funds (including any commingled pools containing operating funds) shall have as their primary objectives safety, investment liquidity, and maturity sufficient to meet anticipated cash flow requirements. The Debt Service fund and Capital Projects funds have longer thresholds for investing due to the nature of the cash flow requirements. Investments for these funds may exceed one year provided legal limits are not exceeded.

For the 2023-2024 school year, the District's investment policy limited any investment to the nine types stated in Board Policy CDA (Legal and Local):

1. Obligations of the United States or Texas or its agencies and instrumentalities and political subdivisions
2. Certificates of deposit
3. Fully collateralized repurchase agreements
4. Securities lending program
5. Banker's acceptances from a bank with a rating not less than A1/P1
6. Commercial paper rated not less than A1/P1
7. Money market mutual funds rated AAA and maintaining a \$1 net asset value
8. A guaranteed investment contract as an investment vehicle for bond proceeds
9. Public funds investment pools

Lake Travis ISD investments during 2023-2024 school year were spread among two public funds investment pools (TexPool and Texas CLASS) and money market mutual funds (Prosperity Bank).

Day to day investments are managed by the Director of Finance. The Assistant Superintendent of Business Services oversees the investment function of the District and presents quarterly reports to the Board of Trustees. The Assistant Superintendent of Business Services and Director of Finance shall maintain the appropriate training requirements.

Recommendations

1. The administration recommends no changes to the District's investment policies CDA (Local).
2. The administration recommends the following staff members to serve as investment officers:
 - Pam Sanchez, Assistant Superintendent of Business Services
 - Brad Goerke, Director of Finance
3. Government Code, Chapter 2256 requires investment officers to receive instruction relating to investment responsibilities under the Public Funds Investment Act from an independent source approved by the Board or a designated investment committee advising the investment officer, as provided for in the District's investment policy. We recommend the following providers for investment training:
 - First Public
 - Hilltop Securities
 - Government Treasurers of Texas (GTOT)
 - PFM Asset Management, LLC
 - Region Education Service Center 13
 - Texas Association of School Administrators (TASA)
 - Texas Association of School Boards (TASB)
 - Texas Association of School Business Officials (TASBO)
 - Texas State University
 - TexPool Academy
 - University of North Texas Public Management
4. We recommend approval of the 2023-2024 Annual Investment Report.

RESOLUTION NO. 101624-01

A RESOLUTION ADOPTING INVESTMENT STRATEGY AND DESIGNATION OF INVESTMENT OFFICERS

WHEREAS, Government Code Chapter 2256, commonly referred to as the Public Funds Investment Act requires the Lake Travis Independent School District to adopt by resolution a written investment policy regarding the investment of its funds and funds under its control, and to review, not less than annually, its investment policy and investment strategy and adopt an instrument stating that it has reviewed the investment policy and investment strategy, and record any changes made to either the investment policy or investment strategy, and

WHEREAS, the Public Funds Investment Act requires the Lake Travis Independent School District to designate by resolution one or more officers or employees to be responsible for the investment of its funds consistent with the investment policy and investment strategy.

NOW THEREFORE BE IT RESOLVED:

THAT the Board of Trustees of Lake Travis Independent School District has reviewed the District’s investment policies under Board Policy CDA (LEGAL) and CDA (LOCAL) and the Investment Strategy;

AND THAT Lake Travis Independent School District designates individuals who hold the positions of Assistant Superintendent of Business Services and Director of Finance as investment officers responsible for the investment of District funds.

PASSED AND APPROVED BY A MAJORITY OF THE BOARD OF TRUSTEES ON THIS THE 16th DAY OF OCTOBER 2024.

APPROVED:

ATTEST:

Erin Archer
President, Board of Trustees

Keely Cano
Secretary, Board of Trustees



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution No. 101624-02 Regarding Adoption of Authorized Broker/Dealer List

RECOMMENDED ACTION

For approval with Consent Agenda.

RATIONALE

Per Governmental Code 2256.025, the Board of Trustees is required annually to adopt a Resolution to approve a list of qualified brokers and dealers who are authorized to engage in investment transactions with the district. The attachment includes the list of approved firms with no changes being recommended.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Pam Sanchez – Assistant Superintendent of Business Services

Brad Goerke – Director of Finance

ATTACHMENTS

Resolution No. 101624-02

MEETING DATE

October 16, 2024

RESOLUTION NO. 101624-02

A RESOLUTION ADOPTING AUTHORIZED BROKER/DEALER LIST

WHEREAS, the Public Funds Investment Act (Texas Government Code, Chapter 2256) governs local government investment; and

WHEREAS, the Public Fund Investment Act (Section 2256.025) requires the governing body or its designated investment committee, no less than annually, to review, revise and adopt a list of qualified broker/dealers authorized to engage in investment transactions; and

WHEREAS, the following broker/dealers are recommended for approval.

NOW, THEREFORE, BE IT RESOLVED that:

Capital One
Coastal Securities
Hilltop Securities
JP Morgan Chase
Merrill Lynch
Morgan Keegan
Oppenheimer & Co., Inc.
Raymond James
RBC Global Asset Management
TCG Advisors
Wells Fargo Advisors

are authorized as broker/dealers for Lake Travis Independent School District.

In accordance with the Investment Policy, a copy of the Investment Policy will be sent to each broker/dealer on the list whenever a material change is made to the Policy.

Any qualified Texas bank used for time or demand deposits may be approved by the investment officers as identified through the competitive process without Board action.

That the Lake Travis Independent School District has complied with the requirements of the Public Funds Investment Act and the list of authorized broker/dealers is hereby adopted.

PASSED AND APPROVED BY A MAJORITY OF THE BOARD OF TRUSTEES ON THIS THE 16th DAY OF OCTOBER 2024.

APPROVED:

ATTEST:

Erin Archer
President, Board of Trustees

Keely Cano
Secretary, Board of Trustees



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Resolution Regarding Extracurricular Status of 4-H Organization

RECOMMENDED ACTION

For approval with Consent Agenda.

RATIONALE

This resolution recognizes the Burnet County 4-H Organization as an extracurricular activity in the district. By approving this request, LTISD allows the same attendance accounting for students who elect to participate in 4-H as in other district approved extracurricular activities.

19 TAC §129.21(k)(1) permits students who are participating in off-campus activities with a professional member of the school district or an adjunct staff member of the school district to be counted as present for attendance purposes. The adjunct staff member must be approved by the school board to supervise the activity, and approval is for only the 2024-2025 school year. Extension Agents may be recognized as adjunct staff members. Burnet County Employs Extension Agents for 4-H activities who will sign the attached Adjunct Faculty Agreement.

BUDGET PROVISIONS

None

RESOURCE PERSONNEL

Stefani Vickery - Assistant Superintendent of Curriculum and Instruction

ATTACHMENTS

1. Resolution Regarding Extracurricular Status of 4-H Organization
2. Adjunct Faculty Agreement

MEETING DATE

October 16, 2024



September 2024

Texas A&M AgriLife Extension, Burnet County
607 N. Vandevener, Suite 100
Burnet, TX 78611

Mr. Paul Norton
Superintendent, Lake Travis Independent School District

Dear Mr. Norton:

On behalf of the 4-H members of Burnet County, I hereby respectfully request that the 4-H organization, by the attached resolution, be sanctioned as an extracurricular activity. The enclosed resolution should be presented for consideration at the next scheduled meeting of the Board of Trustees of the Lake Travis Independent School District.

I further request that questions regarding this resolution be directed to me in a timely manner so that I may prepare and present an appropriate response so as not to delay action on this request.

Finally, I request that a signed copy of this resolution, along with a copy of the minutes of the Board meeting approving same, be forwarded to me for my files. Thank you and the members of your Board of Trustees for your consideration of this request.

Sincerely,

Colton Ripley
County Extension Agent, 4-H & Youth Development
Texas A&M AgriLife Extension, Burnet County

Enclosure: Resolution regarding extracurricular status of Burnet County 4-H & Adjunct Faculty Agreement

RESOLUTION
Regarding
EXTRACURRICULAR STATUS OF 4-H ORGANIZATION

Be it hereby resolved that upon this date, the duly elected Board of Trustees of the Lake Travis Independent School District, meeting in public with a quorum present and certified, did adopt this resolution that recognizes the Burnet County Texas 4-H Organization as approved for recognition and eligible for extracurricular status consideration under 19 Texas Administrative Code, Chapter 76.1, pertaining to extracurricular activities.

Participation by 4-H members under provisions of this resolution is subject to all rules and regulations set forth under 19 Texas Administrative Code, as interpreted by this Board and designated officials of this school district, whose rules shall be final.

Approved this _____ day of _____, 2024.

(For Board of Trustees)

(Superintendent)

ADJUNCT FACULTY AGREEMENT

THE STATE OF TEXAS
COUNTY OF BURNET

On this date, at a regularly scheduled and posted meeting, came the Board of Trustees of the Lake Travis Independent School District, hereinafter referred to as "District." A quorum having been established, the Board proceeded to consider the appointment of the herein named individuals as adjunct members of the Burnet Independent School District.

Upon consideration and vote of _____ in favor to _____, the herein named individuals are hereby named as adjunct faculty members of the Lake Travis Independent School District subject to the following considerations and provisions of such appointment, to wit:

1. This appointment shall commence on the first day of October, 2024 and end on the first day of June, 2025, being the end of the 2024-2025 academic year.
2. Adjunct faculty member will receive no compensation, salary, or remuneration from Burnet Independent School District.
3. Adjunct faculty member is and shall remain an employee, in good standing, of the Texas A&M AgriLife Extension Service.
4. Adjunct faculty member shall be under the direct supervision of the District Extension Administrator of District 7.
5. Adjunct faculty member shall receive all group insurance benefits, workman's compensation insurance benefits, unemployment insurance, and any and all other plans for the benefit of Texas A&M AgriLife Extension Service employees. District shall have no responsibility for any of such benefits or plans.

Adjunct faculty members shall direct the activities and participation of students of the school district in sponsored and approved activities as designated from time to time by adjunct faculty members for which notice shall be given to School District administrative personnel. Adjunct faculty members' activities and participation with students of the School District are directed, supervised, and controlled by and through supervisory personnel of Texas A&M AgriLife Extension Service pursuant to the supervisory authority of the District Extension Administrator. Adjunct faculty members are not employees of the School District, and School District does not nor shall not supervise, direct or control the activities and/or participation of such Burnet County Extension Agent(s) who have/has been herein designated as an adjunct faculty member.

Name:	<u>Kelly Tarla</u>	Title:	<u>CEA - ANR</u>	Degree:	<u>BS/MS</u>	Institution:	<u>Tarleton</u>
Name:	<u>Colton Ripley</u>	Title:	<u>CEA - 4-H</u>	Degree:	<u>BS</u>	Institution:	<u>Oklahoma State</u>
Name:	_____	Title:	_____	Degree:	_____	Institution:	_____

This appointment is made by the Lake Travis Independent School District by and through the Board of Trustees of said district for the benefit of allowing voluntary student participation in programs conducted by the Texas A&M AgriLife Extension Service in recognition of the educational benefits arising from such participation and activities and/or directed by the Texas A&M AgriLife Extension Service. This appointment is made in accordance with the provisions of Section 129.21 (k)(1) of the Texas Administrative Code authorizing the school to deem such participating students in attendance for foundation school program purposes.

This appointment of the herein named Burnet County Extension Agents is not intended nor shall be construed as a waiver of any claim or defense of sovereign or governmental immunity from liability now possessed by Burnet Independent School District or any of its employees, agents, officers, and/or board members in the performance of governmental functions.

Signed this _____ day of _____, 2024

By: _____
Lake Travis Independent School District



AGENDA ITEM ACTION SHEET

AGENDA ITEM

Memorandum of Understanding (MOU) for Lake Travis ISD and for the Juvenile Justice Alternative Education Program (JJAEP) Cooperative of Travis County

RECOMMENDED ACTION

For approval with Consent Agenda.

RATIONALE

The attached Memorandum of Understanding (MOU) is the cooperative agreement with Travis County, the Travis County Juvenile Board, and several area school districts, including Lake Travis ISD, to provide an educational placement for students expelled from school under the expulsion provisions of the Texas Education Code Chapter 37. Under state law and this MOU, students expelled from school in Travis County are placed at the Travis County Juvenile Justice Alternative Education Program (JJAEP).

BUDGET PROVISIONS

2024-2025 Operating Budget

RESOURCE PERSONNEL

Amber King – General Counsel

Stefani Vickery – Assistant Superintendent of Curriculum and Instruction

ATTACHMENTS

2024-25 Memorandum of Understanding for the Juvenile Justice Alternative Education Cooperative of Travis County

MEETING DATE

October 16, 2024



TRAVIS COUNTY JUVENILE PROBATION DEPARTMENT

2515 South Congress Avenue | Austin, Texas 78704
Phone: (512) 854-7000

CORY J. BURGESS
Chief Juvenile Probation Officer

September 18, 2024

Mr. Paul Norton, Superintendent of Schools
Lake Travis Independent School District
3322 RR 620 S.
Austin, TX 78738

RE: Memorandum of Understanding (MOU) SY2024-25
Juvenile Justice Alternative Education Program (JJAEP)

Dear Mr. Norton:

Enclosed is a copy of the Travis County Juvenile Justice Alternative Education Program (JJAEP) Memorandum of Understanding (MOU) for September 1, 2024–August 31, 2025. The MOU was unanimously approved by the Travis County Juvenile Board on August 15, 2024. We respectfully request approval by the Lake Travis Independent School District Board of Trustees and your signature to the enclosed MOU.

The MOU, as authorized by the Texas Education Code, provides for JJAEP services to youth who are referred by school districts for mandatory as well as discretionary expulsions. Pursuant to Section Nine of the MOU, this letter serves as notification of the daily rate for discretionary Category II and IV students. On August 15, 2024, the Juvenile Board set the daily rate per day of enrollment in JJAEP for SY2024-25 for students who are expelled for committing Title 5, Penal Code, felony offenses (Offenses Against the Person), under §37.0081, Education Code, at **\$406.12** per day.

Two types of signatures are approved for the MOU: DocuSign or original. As your ISD has elected to not sign via DocuSign, we must receive the original signature back, not a copy. Please return this approved and signed MOU to the following address:

Tracy Carnley McLain
2515 S. Congress Ave.
Austin, TX 78704

We will forward a completed MOU once we have received all the required signatures and approvals.

If you have any questions, please do not hesitate to contact me at 512-854-7109.

Regards,

DocuSigned by:

7DFA175196A24DC...
Chris Hubner
General Counsel

CC: Judge Maria Cantú Hexsel, Chair, Travis County Juvenile Board
Cory J. Burgess, Chief Juvenile Probation Officer
Sharon Berger, Deputy Chief, Social Services Division
Kristin Meurer, Division Director, Social Services Division

**MEMORANDUM OF UNDERSTANDING
FOR THE
JUVENILE JUSTICE ALTERNATIVE EDUCATION COOPERATIVE
OF TRAVIS COUNTY**

This Memorandum of Understanding ("Agreement") is an Interlocal Agreement entered into pursuant to Texas Education Code, Chapter 37 and the Texas Interlocal Cooperation Act, Texas Government Code, Chapter 791, and is entered into to be effective the 1st day of September, 2024, between **Travis County**, the **Travis County Juvenile Board** ("TCJB"), and the following educational entities: **Austin** Independent School District, **Del Valle** Independent School District, **Eanes** Independent School District, **Lake Travis** Independent School District, **Lago Vista** Independent School District, **Leander** Independent School District, **Manor** Independent School District, **Pflugerville** Independent School District, and **Round Rock** Independent School District (hereinafter referred to collectively as the "ISDs"). The parties to this Agreement shall be collectively referred to herein as "Participants."

RECITALS:

WHEREAS:

- (1) Texas Education Code Sec. 37.011(m) requires the TCJB to enter into a Memorandum of Understanding with the ISDs establishing a Juvenile Justice Alternative Education Program ("JJAEP"); and
- (2) The Participants desire to participate in the Juvenile Justice Alternative Education Program Cooperative of Travis County ("JJAEP Co-Op") and to comply with the agreements contained herein; and
- (3) The ISDs wish to reach an agreement with the TCJB as to the placement of students expelled from school under the discretionary expulsion and removal provisions of Texas Education Code, Chapter 37; and
- (4) The Participants desire to create and operate the JJAEP Co-Op pursuant to Chapter 37 of the Texas Education Code and this Agreement; and
- (5) The Participants further desire to define and create the duties and responsibilities of the Participants, and to set forth herein the methods by which the Participants shall fund, govern and establish the JJAEP Co-Op; and
- (6) The Participant ISDs recognize that the Texas Legislature has appropriated certain funds to pay the County and TCJB for the cost of educating students in the JJAEP Co-Op who are expelled under the mandatory expulsion provisions of Texas Education Code Chapter 37. However, such funds are insufficient to meet the cost of educating students in the JJAEP Co-Op; and

(7) The ISDs are required to consider course credit earned by a student while in the JJAEP Co-Op as credit earned in a school district program pursuant to Texas Education Code Sec. 37.011(d), and the ISDs have an ongoing interest in the quality of education provided in the JJAEP Co-Op and the academic success of students who will be returned from the JJAEP Co-Op to the regular school setting. Therefore, the ISDs desire to assist in providing the JJAEP Co-Op with full, adequate funding; and

(8) The Participant ISDs recognize that for purposes of accountability under Chapter 39 of the Texas Education Code and the Foundation School Program, a student enrolled in the JJAEP shall be reported as if the student were enrolled in an Alternative Education Program of the student's home district and the participating home district of each student shall cooperate fully in making such reports and accepting such accountability. All PEIMS reporting requirements for the students placed in the program shall remain the responsibility of the home district, and all average daily attendance funding entitlements generated from such data shall also remain with the home district, unless otherwise provided by law or regulation of the Texas Education Agency. However, students expelled as "mandatory" placements shall be counted as "ineligible" for attendance counting purposes in the home district; and

(9) The relationship between the Participants necessitates this Interlocal Agreement.

NOW THEREFORE, BY THIS AGREEMENT IT IS MUTUALLY UNDERSTOOD AND AGREED BY THE PARTICIPANTS AS FOLLOWS:

SECTION ONE: DEFINITIONS

For purposes of this Agreement:

1.1 "Discretionary" shall mean any student who is expelled or removed from the regular classroom and meets the definition of any one of the following three categories:

1.1.a. "Discretionary Category I" shall mean any student who is expelled under Texas Education Code Sec. 37.007 (b), (c), (f), or (i) or Sec. 37.0052.

1.1.b. "Discretionary Category II" shall mean any student who is expelled for committing an off-campus offense under Texas Education Code Sec. 37.0081(a);

1.1.c. "Discretionary Category III" shall mean any student who is a publicly Registered Sex Offender who is eligible for placement in the JJAEP under Subchapter I of Chapter 37 of the Texas Education Code.

1.1.d. "Discretionary Category IV" shall mean any student who meets the definitions in Sections 1.1.a–c. above and whose placement in the JJAEP would exceed a school district's allotted discretionary placements as set forth in Section 4.8(A) of this Agreement.

1.2 "ISSP transition team" shall mean those persons responsible for reviewing a student's academic progress in accordance with Texas Education Code Sec. 37.011(d); that is, the TCJB or its designee, and the parent or guardian of the student. For purposes of this Agreement, a representative of the ISD from which the student was expelled may also be a member of the ISSP transition team, together with any JJAEP Co-Op staff as may be appropriate.

1.3 "Mandatory expulsion" shall mean any student who is expelled pursuant to the provisions of Texas Education Code Sec. 37.007 (a), (d), or (e).

1.4 "Rollover funds" shall mean all funds paid by the ISDs to the TCJB for either discretionary or mandatory expulsion allotments that remain unexpended on August 31 of each year.

1.5 "Semester" as referenced by the Texas Education Code Subchapter I. Placement of Registered Sex Offenders shall mean 90 school days.

1.6 "Student" shall mean any person residing in Travis County aged ten years or older and required to attend school pursuant to Texas Education Code Sec. 25.085 and who are under the supervision of juvenile or adult probation.

SECTION TWO: STUDENT CODES OF CONDUCT

2.1 The JJAEP Co-Op will be created and operated pursuant to Chapter 37 of the Texas Education Code and this Memorandum of Understanding. Each ISD has developed a Student Code of Conduct, specifying the circumstances under which a student may be removed from a classroom, campus, or alternative education program.

2.2 The Student Code of Conduct adopted by each ISD shall set forth the circumstances under which students will be subject to expulsion from the school setting and placement in the JJAEP Co-Op. A student may be expelled and placed in the JJAEP if the student, while placed in a disciplinary alternative education program, engages in documented serious misbehavior despite documented behavioral interventions. Serious misbehavior, as defined by Texas Education Code 37.007(c), means:

- (1) Deliberate violent behavior that poses a direct threat to the health or safety of others;
- (2) Extortion, meaning the gaining of money or other property by force or threat;
- (3) Conduct that constitutes coercion, as defined by Section 1.07, Texas Penal Code; or
- (4) Conduct that constitutes the offense of:
 - (A) Public lewdness under Section 21.07, Texas Penal Code;
 - (B) Indecent exposure under Section 21.08, Texas Penal Code;
 - (C) Criminal mischief under Section 28.03, Texas Penal Code;

- (D) Personal hazing under Section 37.152, Texas Education Code; or
- (E) Harassment under Section 42.07(a)(1), Texas Penal Code, of a student or district employee.

SECTION THREE: GOVERNANCE OF JJAEP CO-OP

3.1 Composition of Governing Body - The JJAEP shall operate as a function of Travis County and the TCJB, separate and apart from the other Participants to this Agreement. It shall not be an independent political subdivision, nor shall it operate under the direction or control of any party to this Agreement other than Travis County and the TCJB.

3.2 Executive Committee - Upon the effective date of this Agreement, there shall be created an Executive Committee, consisting of one (1) representative of each ISD, one (1) representative of Travis County, and one (1) representative of the TCJB (Chief Juvenile Probation Officer or designee), each to be appointed by their respective governing body. All representatives to the Executive Committee shall be named not later than thirty (30) days from the effective date of this Agreement. Vacancies on the Executive Committee shall be filled by appointment by the governing body represented thereby.

The Executive Committee exists solely to advise and assist the TCJB, and has no authority to direct or control the JJAEP Co-Op.

3.3 Quorum and Voting - Four (4) members of the Executive Committee shall constitute a quorum. The Executive Committee shall act by and through resolutions, motions or orders adopted or passed by the Executive Committee upon the vote of the majority of the members the Executive Committee attending the meeting at which the issue was presented.

3.4 Voting Rights - Each member shall be entitled to one vote on each matter submitted to a vote of the members. In the event of a tie vote, the Chair shall have two votes.

3.5 Chair - At the initial meeting of the Executive Committee, and thereafter annually, the Executive Committee shall select from its membership a Chair by the affirmative vote of a majority of the members. The Chair shall prepare the agenda, preside over the meetings of the Executive Committee and shall be responsible for scheduling regular and special called meetings of the Executive Committee, including the provision of notice thereof.

3.6 The TCJB representative shall act as custodian of all minutes, records, and reports of the Executive Committee, and shall generally assist the Chair and shall have such powers and perform such duties and services as shall from time to time be delegated to him or her by the Chair.

3.7 The Chair shall serve in his or her respective capacities until tendering written resignation(s) or until replacement by a majority vote of the members of the Executive Committee.

3.8 The Chair shall be entitled to vote on all matters coming before the Executive Committee.

3.9 Meetings - The Executive Committee shall hold regular meetings at such time and in such place determined by the Executive Committee. Procedures for meetings shall be governed by the most current version of *Robert's Rules of Order*. Special meetings of the Executive Committee shall be called by the Chair, or by affirmative vote of not less than one-third (1/3) of the members of the Committee.

3.10 Notice of Meeting - Written notice of the regular meetings of the Executive Committee shall be mailed, delivered or sent by electronic mail to each member not less than five (5) days prior to the date thereof. Written notice of all meetings of the Executive Committee shall be posted at the place(s) for posting notice of public meetings of each of the Parties hereto in accordance with the Texas Open Meetings Act. The Chair of the Executive Committee shall transmit to each member of the Executive Committee a notice for the purpose of such posting not less than five (5) days prior to the date of the meeting. Written notice of any special meeting of the members shall be given to each member not less than 24 hours and as soon as reasonably possible prior to the date thereof. The notice shall state the place, date and time of the meeting, who called the meeting, and the general purpose or purposes for which the meeting is called. Notice shall be given by or at the general direction of Chair of the Committee, or the members calling the meeting.

3.11 Duties - The activities of the Executive Committee shall include, but not be limited to the following:

- A. To develop and recommend proposed written operating policies to the TCJB consistent with any rules and regulations adopted by the Texas Juvenile Justice Department pursuant to Texas Education Code Sec. 37.011, and Texas Human Resources Code Sec. 221.002(a) regarding the operations, policies and procedures of the JJAEP Co-Op, and to make advisory recommendations to the TCJB regarding such operations, policies, and procedures including suggested changes or amendments thereto;
- B. To facilitate coordination with the Participants to this Agreement on matters relating to the supervision, educational and rehabilitative services available for expelled students and students assigned to the JJAEP Co-Op and the subsequent transition back into the school setting;
- C. To formulate and recommend other policies or procedures as appropriate to the TCJB as may be necessary to operate consistent with any rules and regulations as shall be adopted by the Texas Juvenile Justice Department; and
- D. To review the annual budget, actual operating costs, and cost projections for the JJAEP Co-Op.

3.12 JJAEP Co-Op Executive Committee Compensation - No member of the JJAEP Co-Op Executive Committee shall receive compensation for his or her services as a member of the Committee. Nothing herein contained shall be construed to preclude any Committee member from receiving compensation or reimbursement for expenses from the member's respective employer for serving on the Committee.

SECTION FOUR: STUDENT PLACEMENT IN JJAEP

4.1 The Participants hereto acknowledge that Texas Education Code Sec. 37.010(a) requires that every expelled student in a county with a population of 125,000 or greater who is not detained or receiving treatment under an order of the juvenile court must be enrolled in an educational program. It is therefore the intent of the JJAEP Co-Op to provide educational services to all expelled students, as provided more fully herein, in accordance with Texas Education Code Sec. 37.011. However, no students will be assigned to the Travis County JJAEP except as set forth by provisions of this Agreement.

4.2 Students who are expelled from the school district setting will be afforded due process within the respective ISD as provided by school district policy and federal and state law.

4.3 Each ISD shall use its best efforts to notify the juvenile court in writing as soon as practicable upon the ISD's identification of a student who the ISD reasonably believes has engaged in conduct for which the student will be subject to mandatory expulsion. Such notice may be given in addition to any notice required under Texas Family Code Sec. 52.041. If the juvenile court receives written notice under this section that a student is believed to have engaged in conduct for which the ISD reasonably believes the student will be subject to mandatory expulsion, and the student is under the jurisdiction of the juvenile court, the juvenile court shall consider entering an order that the student attend the JJAEP Co-Op as soon as practicable, pending the outcome of any disciplinary proceedings at the ISD.

4.4 Every student eligible for placement in the JJAEP as set forth by the provisions of this Agreement who has been expelled from an ISD, and for whom information has been provided by the ISD from which the student has been expelled to the juvenile court in accordance with Texas Family Code Sec. 52.041, shall be ordered by the juvenile court to enroll in the JJAEP Co-Op as soon as reasonably practicable after the juvenile court's receipt of such notice. The information provided by the ISD for any student expelled for serious misbehavior under Texas Education Code Sec. 37.007(c), shall include documentation of the serious misbehavior and documentation of the behavioral interventions provided by the ISD prior to the expulsion.

4.5 Failure of an ISD to timely notify the juvenile court of an expulsion pursuant to Texas Family Code Sec. 52.041 shall result in the student's duty to continue attending the school district's educational program, which shall be provided to that student until such time as the notification to the juvenile court is properly made.

4.6 The juvenile court shall, for each student taken into custody for conduct that occurred on school property or at a school-sponsored or school-related activity, use its best efforts to ascertain whether the conduct for which the student was taken into custody would subject the student to mandatory expulsion. If the juvenile court ascertains that the conduct for which the student was taken into custody is such that it would subject the student to mandatory expulsion, the juvenile court shall consider entering an order that the student immediately begin attending the JJAEP Co-Op pending resolution of the disciplinary action, including any expulsion hearings, at the ISD.

4.7 It is the intent of the Participants hereto that for each expelled student who is placed in the JJAEP Co-Op, the term of such placement will be coterminous with the term of the student's expulsion from school. In an effort to support a student's successful transition from the JJAEP, the ISDs agree that a student's JJAEP placement shall terminate at the end of the home school district's grading period, except that any placement shall have a term of no less than 30 school days, absent extenuating circumstances. Students must remain in the JJAEP Co-Op for the full period ordered by the juvenile court unless the student's school district agrees to accept the student before the date ordered by the juvenile court, or the student is referred back to the ISD pursuant to Section 4.8 or Section 4.9 or Section 4.10 herein. The juvenile court shall consider the term of a student's expulsion in entering any order as to the student, including terms and conditions of release from custody, deferred prosecution, or probation. At the conclusion of the student's term of probation, or any other requirement imposed by the juvenile court, including conditions of a deferred prosecution ordered by the court, or such conditions required by the prosecutor or probation department, and if the student meets the requirements for admission into the public schools established by law, the school district in which the student resides must readmit the student, but may assign such student to the school district alternative education program. In an effort to facilitate the required transition meeting between JJAEP and the home school district, a student may remain enrolled in the JJAEP for up to one week (7 calendar days) in the event that a student's term of probation or pre-trial supervision ends before the term of expulsion expires. The JJAEP is responsible for ensuring the transition meeting is scheduled at the earliest possible date.

4.8 It is the intent of the Participants hereto that the JJAEP Co-Op shall give priority to mandatory expulsion students from each of the ISDs. It is understood by the Participants, however, that the JJAEP Co-Op has limited space and staffing, and that conditions outside the control of any Participant to this Agreement may cause fluctuations in the JJAEP Co-Op population. The current maximum capacity of the JJAEP is fifty students. The "maximum capacity" of the JJAEP may be redefined from time to time, however, as deemed appropriate by the JJAEP Co-Op. Given the limited space at the JJAEP, participants agree to abide by the following procedures for discretionary placement decisions:

- A. Each participating school district will be permitted to enroll as many as four (4) discretionary students in the JJAEP Co-Op at the same time during the school year. Any district that exceeds four (4) discretionary enrollments at the same time will be billed in accordance with Section 9.1.b. of this Agreement. These students must meet the definitions of Discretionary Category I, II, III or IV students, as set forth by

Section 1.1 of this Agreement.

- B. Discretionary students will not be accepted into the JJAEP in the event that maximum capacity has been reached.
- C. Discretionary students will not be accepted into the JJAEP if the student is seventeen (17) years of age or older, and not under the jurisdiction of the juvenile court.

In the event the JJAEP has reached maximum capacity and a mandatory expulsion student is referred for placement in the JJAEP Co-Op, the JJAEP Manager will immediately identify the school district(s) with the highest number of discretionary student placements and determine which discretionary student from these districts should be dismissed from the JJAEP Co-Op to accommodate the additional mandatory expulsion student. The decision by the JJAEP Manager will be based on the severity of the offense, the circumstances and term of the expulsion, the number of days the student has attended JJAEP, and the student's academic and behavioral progress while at the JJAEP.

In the event the JJAEP has reached maximum capacity and a school district with fewer than four (4) discretionary placements refers a student for placement based on a discretionary offense, the JJAEP Manager will identify any district(s) with more than four (4) discretionary student placements and determine which discretionary student(s) from these districts must be dismissed from the JJAEP to accommodate the referral from the district with fewer than four (4) discretionary placements. The decision by the JJAEP Manager will be based on the severity of the offense, the circumstances and term of the expulsion, the number of days the student has attended JJAEP, and the student's academic and behavioral progress while at the JJAEP.

4.9 A student who is assigned to the JJAEP as a "Discretionary Category II" student for a felony offense under Texas Education Code Sec. 37.0081(a) shall be returned to the student's home ISD upon the first of the following events to occur:

- a. The charges are dismissed or reduced to a misdemeanor offense;
- b. The student is acquitted;
- c. The student completes the term of placement;
- d. The student is assigned to another program; or
- e. The student graduates from high school.

4.10 A student who is assigned to the JJAEP for engaging in serious misbehavior, as defined by and pursuant to Texas Education Code Sec. 37.007(c) will be returned to the sending ISD upon the completion of the semester or, in circumstances when the student is expelled within 6 weeks of the end of a semester, the completion of the following semester, unless otherwise returned earlier by expiration of the term of the expulsion or by other mutual agreement.

SECTION FIVE: SCHOOL LIAISON

5.1 Each ISD shall notify the juvenile court in writing of its designated School Liaison. Each School Liaison shall have authority to offer recommendations to the juvenile court regarding placement alternatives for students under the jurisdiction of the juvenile court, and to bind the School Liaison's respective ISD to any agreement to return a child to the school setting.

5.2 The School Liaison shall assist the juvenile court in obtaining the permission from the parent(s) of each student served by the JJAEP Co-Op to release medical, educational or other appropriate records to the juvenile court and to the JJAEP Co-Op. In the absence of such parental consent, the juvenile court may consider the need for a court order releasing such records, and the School Liaison may provide the juvenile court with such other educational information regarding the child as may be permitted by law.

5.3 The School Liaison shall be responsible for coordinating the ISD's participation on the ISSP transition team, as appropriate.

5.4 As necessary, the School Liaison will consult with representatives of the Participants regarding matters affecting the programs, services, and student population of the JJAEP Co-Op.

SECTION SIX: JJAEP CO-OP FACILITIES AND STAFFING

6.1 The JJAEP Co-Op facilities and staffing will be provided by Travis County and the TCJB. Such facilities and staffing may be provided under a separate agreement with one or more ISDs or a third-party provider. It is contemplated by the Participants that the facilities, staffing, services and other requirements of the JJAEP Co-Op will be fully operational to the extent of this Agreement no later than the first day of school in each year in which this Agreement continues in force and effect. The JJAEP Co-Op shall operate on the same school calendar as the Austin Independent School District. TCJB shall comply with all state bidding and procurement laws in obtaining facilities and staffing for the JJAEP Co-Op to the extent such are applicable.

SECTION SEVEN: TRANSPORTATION

7.1 Each ISD shall be responsible for providing for the transportation of its students to and from the JJAEP Co-Op facility. Each ISD acknowledges and agrees that the student drop off and pick-up locations will be no further than two (2) miles from the students' residence. Disciplinary incidents occurring during transport on the ISDs' vehicles will be referred to the JJAEP Program Administrator or designee for appropriate disciplinary action.

SECTION EIGHT: RELEASE OF STUDENT AND JUVENILE RECORDS

8.1 The governing body of each Participant finds that in order to appropriately serve students receiving services under this Agreement, the sharing of information pertinent to the provision of education and rehabilitation services is essential and in the best interests of the students served. In the absence of parental consent, the juvenile court with jurisdiction over a student receiving educational services under this Agreement shall consider authorizing the entities providing services to such student to release appropriate juvenile, educational, diagnostic, treatment or other records as appropriate to permit the consistent provision of services to the student, as provided under Texas Family Code Sec. 58.0051 and 58.0052.

8.2 All student education records specific to an individual student shall be considered confidential, and shall be shared only with the juvenile court, the student, the parent(s) or guardian(s) of the student, and those employees of the juvenile court, Participant, or JJAEP Co-Op with a legitimate educational interest in the student. Student educational records shall be transferred to the appropriate ISD upon dismissal of a student from the JJAEP Co-Op.

- 8.3 Each ISD shall be responsible for providing the JJAEP the following educational records prior to the student's admission to the JJAEP:
- a. Grades and transcript (current and immediately preceding semester)
 - b. Current student schedule
 - c. Attendance for the immediately preceding semester
 - d. Behavior referrals for the immediately preceding semester
 - e. Student's Texas Unique ID Number (TSDS #)
 - f. PEIMS ID
 - g. Immunization records
 - h. Special Education assessments, if applicable
 - i. Special Education plans, including ARD, IEP, BIP, or 504 information, if applicable
 - j. Manifestation Determination Review documentation, if applicable
 - k. LPAC-ELL documentation, if applicable
 - l. Home language survey
 - m. School lunch eligibility
 - n. Current information related to state-mandated assessments
 - o. Expulsion letter

SECTION NINE: FUNDING FOR JJAEP CO-OP

9.1.a. Daily Rate for Discretionary Category I and III Students - The ISDs will be billed a daily rate not to exceed the daily rate authorized by the Texas Juvenile Justice Department for mandatory expulsion students for each day a "Discretionary Category I" student expelled pursuant to Texas Education Code Sec. 37.007 (b), (c), (f) or (i); or a "discretionary category III" student placed as a publicly Registered Sex Offender pursuant to Texas Education Code Chapter 37,

Subchapter I, is in attendance in the JJAEP Co-Op.

9.1.b. Daily Rate for Discretionary Category II and IV Students - The ISDs will be billed a daily rate based on the actual operational costs, as determined by the TCJB based on the Board's annual audit, for each day a "Discretionary Category II" student expelled for a felony pursuant to Texas Education Code Sec. 37.0081 or a "Discretionary Category IV" student is enrolled in the JJAEP. Audit figures from the most recently finalized audit will be used to set current year actual daily costs. The rate per student per day of enrollment for school year 2024-25 will be set by the TCJB at their duly noticed meeting in August 2024, and notification will be provided to all ISDs under this Agreement.

9.2 Rollover Funds - If any portion of the funds paid by the ISDs hereunder remain unused at the end of the term of this Agreement, such funds shall become rollover funds for the following year and shall be applied to the cost of funding JJAEP Co-Op operational expenses for the subsequent school year(s).

9.3 Maintenance of Depository Account - Travis County shall place all funds received hereunder in a fully insured depository account, or other secured account, as required by law. Funds received hereunder shall be separately accounted for and may not be budgeted or allocated for any purpose other than the operation of the JJAEP Co-Op. All principal and any interest accruing to the TCJB account from such deposited funds shall be credited to the JJAEP Co-Op and shall be used for the necessary and reasonable expenses of the JJAEP Co-Op and shall not be commingled with the regular operating funds of either the TCJB or Travis County. All rollover funds shall be separately accounted for and used to fund program costs for the subsequent school year.

9.4 Accounting - Travis County shall provide an accounting to the Participants, on an as-requested basis, of the amounts paid to the TCJB in connection with the JJAEP Co-Op, together with supporting documentation.

9.5 Billing - Travis County agrees to establish and coordinate billing arrangements with the ISDs with respect to the ISDs' funding obligations, if any, to the JJAEP Co-Op under this Agreement.

9.6 Audit - At least annually, Travis County shall provide an audited accounting to the other Participants of funds received and paid with respect to the JJAEP Co-Op.

9.7 Budget - The Executive Committee shall provide recommendations to the TCJB on budgetary matters relating to the establishment and operation of the JJAEP Co-Op.

SECTION TEN: SPECIAL SERVICES

10.1 The TCJB shall be responsible for providing any educational and support services that are provided to all students in a general education setting. The referring ISD is responsible for

providing any education and support services beyond the general educational curriculum and general education setting that are required to comply with Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans with Disabilities Act of 1990 (“ADA”), Individuals with Disabilities Education Act (“IDEA”), and Title VI of the Civil Rights Act of 1964. The ISD in which a student resides shall provide and fund any services specified in the Individualized Education Plan (IEP), 504 Plan, and Language Proficiency Assessment Committee (LPAC) Report that fall outside of the general education curriculum or setting to eligible students.

10.2 TCJB and the ISDs shall cooperate in the provision of special services to students placed in the JJAEP Co-Op. However, ultimately, the referring ISD is responsible to ensure that appropriate programs and services, as articulated in a student’s IEP, Behavior Intervention Plan (BIP), 504 Plan, or LPAC Report are provided at the JJAEP continuously and without disruption.

10.3 Any student who commits an offense and has been identified by the ISD as having a disability may be expelled from the ISD only after a duly constituted Admission, Review, and Dismissal (“ARD”) Committee or 504 Committee determines that the alleged offense is not a manifestation of the student’s disability in accordance with applicable state and federal laws. Each ISD shall provide reasonable notice to the administrator of the JJAEP Co-Op of the ISD's ARD Committee or 504 Committee meetings where placement in the JJAEP Co-Op will be considered or when reviewing or modifying the program of a student who qualifies for special education or 504 services in the JJAEP Co-Op. A copy of the student’s current Special Education or 504 records must be provided to the JJAEP administrator with the notice of the meeting. The JJAEP administrator or designee may participate in the meeting to the extent that the meeting relates to the student’s placement in the JJAEP and the implementation of the student’s IEP, BIP, or 504 Plan. The ISDs shall be responsible for scheduling and sending notices of ARD or 504 meetings during the period of expulsion, and for notifying and inviting JJAEP Co-Op representatives to participate in these meetings. For students receiving services under the Individuals with Disabilities Education Act or Section 504, the ARD Committee or 504 Committee meetings shall satisfy the requirement for the Individual Student Services Plan transition team meetings as otherwise required in Section 12.1 herein.

10.4 If, after placement of a student with disabilities in the JJAEP Co-Op under this Agreement, the administrator of the JJAEP Co-Op has concerns that the student’s educational or behavioral needs cannot be met in the JJAEP Co-Op, the administrator (or his/her designee) shall immediately provide written notice to the ISD from which the student was expelled. Upon receipt of such notice, the ISD shall convene an ARD Committee or 504 Committee meeting to reconsider the placement of the student in the program, giving reasonable advance notice to the administrator of the JJAEP Co-Op. A representative of the JJAEP Co-Op may participate in the ARD Committee or 504 Committee meeting to the extent that the meeting relates to the student’s placement or continued placement in the JJAEP Co-Op.

10.5 If a student assigned to the JJAEP is suspected of having a disability under IDEA criteria, the referring ISD’s Child Find procedure will be initiated to resolve whether an assessment to determine eligibility is necessary. The JJAEP will assist with the completion of necessary

referral documents. Any student determined to qualify for services and protection under IDEA or Section 504, shall be afforded all lawfully required services and protections by the referring ISD to the extent that the JJAEP cannot provide the service and the referring ISD is notified of the need to provide the service.

10.6 The JJAEP, in collaboration with the referring ISD, must ensure that a student who is non-English speaking or who speaks English as a second language is provided English Language Learner (ELL) services and instruction appropriate to address his or her needs, as determined by a Language Proficiency Assessment Committee (LPAC). The referring ISD shall be responsible for scheduling and sending notices of LPAC meetings and any related assessments during the period of expulsion. The referring ISD shall provide reasonable written notice to the JJAEP Administrator of any LPAC meetings during the period of expulsion and will allow JJAEP representatives to attend and participate in the meetings. The referring ISDs will provide copies of the most current LPAC determinations to the JJAEP.

SECTION ELEVEN: ADMINISTRATION OF ALL REQUIRED STATE TESTING

11.1 In accordance with Texas Education Code, Section 37.011(d), state mandated assessment instruments shall be administered to all students enrolled in the JJAEP, except where such students are exempted from such testing by an ARD committee or other legal authority. The Participants agree that they will cooperate in the acquisition of testing materials, scheduling, and as otherwise necessary in order to facilitate assessment instrument administration. Prior to scheduled testing dates, the Participants will communicate regarding the most efficient method of obtaining secured testing materials for all students placed in the JJAEP. The JJAEP and ISDs will cooperate in the acquisition of such materials for students in the JJAEP. Each ISD shall provide to the JJAEP Administrator the name of a responsible contact person who shall have responsibility, on behalf of each ISD, for coordination of administration of statewide assessment instruments for that ISD's students enrolled in the JJAEP.

SECTION TWELVE: EXPEDITED MAGISTRATE SYSTEM

12.1 The expeditious hearing of all cases related to the JJAEP Co-Op by the juvenile court is crucial to the spirit and the letter of the Texas Legislature's changes to the Education, Family, and Penal Codes, along with Texas Administrative Code, Chapter 348. The TCJB and juvenile courts will utilize their best efforts to provide a system whereby all juvenile cases related to the Travis County JJAEP can be heard by the juvenile courts as soon as practicable after the student has been expelled from the school setting. Accordingly, the following expedited judicial procedures shall be applied to those cases concerning students expelled from the school setting, pursuant to Texas Family Code Sec. 52.041:

- A. The juvenile courts shall establish a procedure by which the Juvenile Probation Department Intake Unit shall identify students who are eligible for placement in the JJAEP Co-Op and notify the District Attorney when it receives a referral for an offense that may result in placement in the JJAEP Co-Op not later than the next

working day after the referral is received.

- B. The ISDs shall make their best efforts to conduct their expulsion hearings no later than seven (7) school days after an offense is reported to the respective School Liaison. If the student is expelled, the ISD will send to the juvenile court, not later than the second working day after the expulsion hearing, the recommendations of the School Liaison regarding placement of the student in either the JJAEP Co-Op or a school district program and any other relevant documentation as required by Section 12.1 (D) of this Agreement.

- C. If a student is expelled before a referral to juvenile court is made by law enforcement or any other referring agency, the expulsion order will serve as the initial referral to juvenile court.

- D. The board of the school district or a person designated by the board shall deliver a copy of the order expelling the student and any other information required by Texas Family Code Sec. 52.04 on or before the second working day after the date of the expulsion hearing to the authorized officer of the juvenile court. The referring agency shall provide the following information upon the referral of a child to juvenile court:
 - (1) all information in the possession of the person or agency making the referral pertaining to the identity of the child and the child's address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;
 - (2) a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;
 - (3) when applicable, a complete statement of the circumstances of taking the child into custody;
 - (4) when referral is by an officer of a law-enforcement agency, a complete statement of all prior contacts with the child by officers of that law-enforcement agency; and
 - (5) when referral is by a school district, any academic and behavioral records as the district has legal authority to share with the juvenile court, or in the absence of such authority, a written report relating non-confidential information that is relevant to the educational placement of the student.

- E. Within five (5) working days of receipt of an expulsion order by the office or official designated by the juvenile board, a preliminary investigation and determination shall be conducted as required by Texas Family Code Sec. 53.01.

- F. The office or official designated by the juvenile board shall within two (2) working days notify the school district that expelled the student if:
- (1) the student is not a child;
 - (2) no probable cause existed to believe the child engaged in delinquent conduct or conduct indicating the need for supervision;
 - (3) no deferred prosecution or formal court proceedings have been or will be initiated involving the child;
 - (4) the court or jury finds that the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case has been dismissed with prejudice; or
 - (5) the child was adjudicated but no disposition was or will be ordered by the court. Texas Family Code Sec. 52.041(d).
- G. No student shall be expelled without written notification by the board of the school district or its designated agent to the juvenile board’s designated representative. The notification shall be made not later than two (2) working days following the board’s determination that the student is to be expelled. Failure to timely notify the designated representative of the juvenile board shall result in the student’s duty to continue attending the school district’s educational program, which shall be provided to that student until such time as the notification to the juvenile board’s designated representative is properly made. Texas Family Code Sec. 52.041(e).

SECTION THIRTEEN: ACADEMIC REVIEW AND TRANSITION

13.1 Within a reasonable period of time after admission to the JJAEP Co-Op, each student shall have an Individual Student Services Plan (“ISSP”) prepared by the ISSP transition team to meet the student’s individual academic needs. The ISSP shall be reviewed periodically, at reasonable intervals, and shall address each student’s emotional, social, and educational needs. In the case of a high school student, the ISSP shall contain a review of the student’s progress toward meeting high school graduation requirements and shall establish a specific graduation plan for the student. The ISSP shall be designed by the ISSP transition team and any other persons deemed appropriate by the TCJB, and shall require parental participation. For students receiving services under IDEA, no ISSP transition team review shall be required under this section.

13.2 The TCJB shall provide to the ISDs a summative evaluation of the performance of all students served by the JJAEP Co-Op on an annual basis. Such evaluation shall reflect the academic performance of students served in the JJAEP Co-Op each year, as well as providing follow-up with former students of the JJAEP Co-Op. The ISDs shall assist the JJAEP Co-Op in developing meaningful performance measurement criteria, and in providing follow-up data for

former JJAEP Co-Op students who return to the school setting. All Participants shall use their best efforts to work collaboratively to capture meaningful performance data, as well as follow-up information on students returning to the ISDs.

13.3 The ISSP transition team shall formulate a transition plan, specifying any services to be provided upon return to the regular educational setting, as part of the ISSP for each student. The ISSP transition plan shall be completed prior to the student's completion of the JJAEP Co-Op placement.

SECTION FOURTEEN: TERM OF AGREEMENT

14.1 The initial term of this Agreement shall be for the period from the effective date of this Agreement through August 31, 2025. This Agreement shall be automatically renewed for an additional term of one (1) year on the same terms and conditions, unless one or more of the Participants hereto elects to terminate this Agreement by providing written notice to all other Participants hereto at least sixty (60) days prior to the expiration of the initial term, unless terminated sooner. This Agreement may be extended for additional terms of one (1) year upon the mutual consent of the Participants evidenced by an extension agreement entered into not later than thirty (30) days prior to the termination date of this Agreement, or any extension hereof.

14.2 Any provision of the preceding Section 14.1 to the contrary notwithstanding, any ISD may withdraw from this Agreement prior to the expiration of the term hereof by written agreement of the TCJB, or for good cause, at any time. Any ISD withdrawing from this Agreement shall be entitled to recover all funds from the Texas Juvenile Justice Department to which it is entitled. No ISD withdrawing from this Agreement shall be entitled to receive any portion of the rollover funds, unless this Agreement is terminated by all Participants hereto in its entirety, or this Agreement is terminated by operation of law. In the event this Agreement is terminated in its entirety, any rollover funds remaining shall be distributed to the ISDs, pro-rata, based upon the number of students served by the ISD residing in Travis County.

14.3 In the event of termination by any Participant, the Agreement will remain in force and effect with respect to the remaining Participants, unless such termination frustrates the overall purposes and intent of this Agreement.

SECTION FIFTEEN: MISCELLANEOUS

15.1 Records and Reporting Requirements - Throughout the term of this Agreement, the Participants hereto agree to establish and maintain detailed records regarding the administration and operation of the Juvenile Justice Alternative Education Program and JJAEP Co-Op, including information regarding the costs of such programs, including facilities, staffing and administrative expenses.

15.2 Legal Requirements - The Participants agree to comply fully with all applicable federal, state, and local statutes, ordinances, rules, and regulations in connection with the programs contemplated under this Agreement. This Agreement is subject to all applicable present and future valid laws governing the juvenile justice programs applicable to school districts and/or county juvenile probation departments. In the event that any of the Participants hereto are required by law or regulation to perform any act inconsistent with this Agreement, or to cease performing any act required by this Agreement, this Agreement shall be deemed to have been modified to conform with the requirements of such law or regulation.

15.3 Notice - Except where oral notice is specifically allowed or required under this Agreement, any notice provided hereunder by any party to another shall be in writing and may be either: 1) delivered by hand to the party or the party's designated agent; 2) deposited in the United States mail, postage paid; 3) transmitted by telecopy; 4) transmitted by electronic mail transmission; or 5) delivered by a reputable courier service, to the following address or telecopy number:

Austin Independent School District:

Mr. Matias Segura, Superintendent of Schools
Austin Independent School District
4000 S. I-H 35 Frontage Road
Austin, Texas 78704
512-414-2412 PHONE 512-414-1486 FAX
e-mail: matias.segura@austinisd.org

Del Valle Independent School District:

Mr. Jonathan Harris, Acting Superintendent of Schools
Del Valle Independent School District
5301 Ross Road, Suite 103
Del Valle, TX 78617
512-386-3010 PHONE 512-386-3015 FAX
e-mail: superintendent@dvisd.net

Eanes Independent School District:

Dr. Jeff Arnett, Superintendent of Schools
Eanes Independent School District
601 Camp Craft Road
Austin, TX 78746
512-732-9001 PHONE 512-732-9005 FAX
e-mail: jarnett@eanesisd.net

Lake Travis Independent School District:

Mr. Paul Norton, Superintendent of Schools
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, TX 78738
512-533-6020 PHONE 512-533-6001 FAX
e-mail: nortonp@ltsidschools.org

Lago Vista Independent School District:

Mr. Darren Webb, Superintendent of Schools
Lago Vista Independent School District
P.O. Box 4929
Lago Vista, TX 78645-0001
512-267-8300 PHONE 512-267-8304 FAX
e-mail: darren_webb@lagovista.txed.net

Leander Independent School District:

Dr. Bruce Gearing, Superintendent of Schools
Leander Independent School District
P.O. Box 218
Leander, Texas 78646
512-570-0000 PHONE 512-570-0048 FAX
e-mail: superintendent@leanderisd.org

Manor Independent School District:

Dr. Robert Sormani, Superintendent of Schools
Manor Independent School District
P.O. Box 359
Manor, TX 78653
512-278-4002 PHONE 512-278-4017 FAX
e-mail: Robert.Sormani@manorisd.net

Pflugerville Independent School District:

Dr. Quintin Shepherd, Superintendent of Schools
Pflugerville Independent School District
1401 West Pecan Street
Pflugerville, TX 78660-2518
512-594-0000 PHONE 512-594-0011 FAX
e-mail: superintendent@pfsd.net

Round Rock Independent School District:

Dr. Hafedh Azaiez, Superintendent of Schools
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681
512-464-5022 PHONE 512-464-5055 FAX
e-mail: superintendent_rrisd@roundrockisd.org

Travis County Juvenile Board:

Honorable Maria Cantú Hexsel
53rd District Court
Chair, Travis County Juvenile Board
1700 Guadalupe Street, 8th Floor
Austin, Texas 78701
512- 854-9308 PHONE 512-854-9332 FAX

Travis County:

Honorable Andy Brown, Travis County Judge
700 Lavaca, Suite 2.300
Austin, Texas 78701
512- 854-9555 PHONE 512-854-9535 FAX
with a copy to the Travis County Attorney:
Honorable Delia Garza, Travis County Attorney
314 West 11th Street, Suite 300
Austin, Texas 78701
512- 854-9415 PHONE 512-854-9316 FAX

Any party may designate a different agent or address for notice purposes by giving the other Participants ten (10) days written notice in the manner provided above.

15.4 Amendments - If changed conditions are encountered during the term of this Agreement, the Agreement may be supplemented or amended under terms and conditions mutually agreeable to the Participants, provided that all such changes, amendments, supplements or modifications shall be in writing.

15.5 Integration Clause - This Agreement, including schedules and attachments, contains the entire agreement of the Participants hereto with respect to the matters covered by its terms, and it may not be modified in any manner without the express written consent of the Participants. No other agreement, statement, or promise made by or to any party, or made by or to any employee, officer, or agent of any party, that is not contained in this Agreement shall be of any force or effect. It is acknowledged by the Participants that no officer, agent, employee or representative of Travis County has any authority to change or amend the terms of this Agreement or any attachments to it or to waive any breach of this Agreement unless expressly granted that authority by the Travis County Commissioners Court.

15.6 Partial Invalidity - If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be effected, impaired or invalidated, unless such holding causes the obligations of the Participants hereto to be impossible to perform or shall render the terms of this Agreement to be inconsistent with the intent of the Participants hereto.

15.7 Non-assignability - No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by any Participant without the prior written consent of the other Participants hereto.

15.8 Waiver - No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

15.9 Immunity - Neither Travis County, the TCJB, nor the ISDs waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, offices, employees, and agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

15.10 Available Funds - The Participants to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

15.11 Open Meetings - The meetings at which this Agreement was approved by the Participants' governing boards were posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Ch. 551.

15.12 Mediation - Any dispute arising under this Agreement may be submitted, upon agreement of the Participants, to non-binding mediation. When mediation is acceptable to the participants in resolving any dispute rising under this Agreement, the Participants agree to use the Dispute Resolution Center of Austin or any other mediator as shall be mutually agreed upon by the Participants, to provide mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless the Participants are satisfied with the result of the mediation, the mediation will not constitute a final binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless the Participants agree, in writing, to waive the confidentiality.

IN WITNESS THEREOF, the undersigned Participants acting under the authority of their respective governing boards have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original, all as of the day and year above first written, which is the date of this Agreement.

APPROVED:

Signed by:

Judge Maria Cantú Hexsel

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Honorable Maria Cantú Hexsel
Chair, Travis County Juvenile Board

APPROVED:

DocuSigned by:

Andy Brown

C24247DB234D47D...

Honorable Andy Brown
Travis County Judge

APPROVED:

Austin Independent School District

APPROVED:

Eanes Independent School District

APPROVED:

Lake Travis Independent School District

APPROVED:

Manor Independent School District

APPROVED:

Round Rock Independent School District

APPROVED:

Del Valle Independent School District

APPROVED:

Lago Vista Independent School District

APPROVED:

Leander Independent School District

APPROVED:

Pflugerville Independent School District