

Marble Falls ISD
has an unyielding commitment
to love every child and inspire
them to achieve their fullest
potential.



**Marble Falls ISD
Regular Meeting**

**Tuesday, March 26, 2019
6:00 PM**

**AGENDA OF REGULAR MEETING
MARBLE FALLS INDEPENDENT SCHOOL DISTRICT
BOARD OF TRUSTEES
TUESDAY, MARCH 26, 2019 – 6:00 PM
Marble Falls ISD Central Office Community Room**

Notice is hereby given that on March 26, 2019, the Board of Trustees of the Marble Falls Independent School District will hold a Regular meeting at 6:00 PM, at the Marble Falls ISD Central Office Community Room, 1800 Colt Circle, Marble Falls, TX 78654.

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 meeting notice.

1. Call to Order
Presenter: Kevin Naumann, President
2. Roll Call
Presenter: Kevin Naumann, President
3. Invocation
Presenter: Kevin Naumann
4. Vision Statement
Presenter: Alex Payson
5. Pledge to the Flags
Presenter: Lieutenant Colonel Michelle Hinojosa Texas Medical Detachment, Deputy
Commander of Administration
6. Special Recognition
 - A. Superintendent's Award- Marble Falls Elementary
Presenter: Michael Haley
 - B. Quill & Scroll Award Recipient 5
Presenter: Wayne Grummett
 - C. Marble Falls High School Swim Team- State Qualifiers
Presenter: John Berkman
 - D. Marble Falls High School Band- State Qualifiers
Presenter: Anthony Leflet
 - E. PCAT Driver of the Year- Susan Rader
Presenter: George Hamilton
7. Citizen Comments
8. Information Items
 - A. General Fund Summary 6
 - B. Expenditure Report 10
 - C. Head Football Coach Search Timeline 27
9. Presentation/Discussion Items and Possible Action
 - A. IMA Purchase 29
Presenter: Dr. Melissa Fields
 - B. Child Nutrition Program Update 30
Presenter: Dr. Jeff Gasaway

C. Third Party Independent Reviewer for HVAC and LED Work Presenter: Dr. Jeff Gasaway	58
D. HVAC and LED Project Contract Presenter: Dr. Jeff Gasaway	59
E. Ranking of Offerors for Construction Manager At-Risk Services for the 2018 Bond Projects* (those identified in the procurement package) and Delegation of Authority to the Superintendent to Negotiate a Contract with the Top-Ranked Offeror for Presentation to the Board for Approval Presenter: Dr. Chris Allen	174
F. Selection of Company to Replace the Turf & Resurface the Track at Mustang Stadium Presenter: Dr. Chris Allen	177
G. Staff Development Waiver Presenter: Dr. Wes Cunningham	182
10. Consider and Possible Approval of Action	
A. Consent	
1. Budget Amendments	185
2. Certification of Unopposed Candidates for May 4, 2019 Election Presenter: Dr. Jeff Gasaway	191
3. Order of Cancellation of the May 4, 2019 Election Presenter: Dr. Jeff Gasaway	193
4. Policy Update 112, affecting local policies BJA, CCG, CCGA, CH, CQ, CV, DCB, DH, DIA, FMA, FNG, GF, GKA and GKB	195
5. EIC (Local) and EIF (Local) Policy Updates	203
B. Minutes from Regular Board Meeting held on February 19, 2019	213
C. Waive Tax Penalties & Interest Presenter: Melissa Lafferty	216
11. Upcoming Meetings and Board Training Opportunities	
A. Monday, April 15, 2019 - Regular Board Meeting	
B. Monday, April 29, 2019 - Special Board Meeting	
C. Monday, May 20, 2019 - Regular Board Meeting	
D. Summer Leadership Institute/ SLI - San Antonio - June 13-15, 2019 Fort Worth - June 20-22, 2019	
12. Executive Session	
A. Discussion of Professional Personnel (TX Govt. Code 551.074)	
B. Discussion of Renewal/Extension of Campus Based and Central Office Administrators' Contracts (TX Govt. Code 551.074)	
C. Discussion of Real Property (TX Govt. Code 551.072)	
D. Discussion of Personally Identifiable Student Information (TX Govt. Code 551.0821)	
13. Reconvene from Executive Session	
14. Discussion and Possible Approval of Action Arising from Executive Session	
A. Possible Approval of Professional Personnel	

B. Possible Approval of Renewal/Extension of Campus Based and Central Office
Administrators' Contracts

C. Possible Approval of Real Property

15. Adjourn

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

FOR THE BOARD OF TRUSTEES
MARBLE FALLS INDEPENDENT SCHOOL

Dr. Chris Allen, Superintendent of Schools



Marble Falls ISD
Statement of Revenues and Expenditures - General Fund
As of February 28, 2019

67%	Of Fiscal Year	CURRENT YEAR YTD				February
		BUDGET	YTD ACTIVITY	BALANCE	% OF BUDGET	ACTIVITY
REVENUES						
5710	LOCAL TAX REVENUES	\$ 41,543,823	\$ 38,765,331	\$ 2,778,492	93.31%	\$ 7,662,897
57XX	OTHER LOCAL REVENUES	\$ 467,837	\$ 526,384	\$ (58,547)	112.51%	\$ 101,511
58XX	STATE PROG. REVENUES	\$ 5,560,702	\$ 3,426,476	\$ 2,134,226	61.62%	\$ 154,938
5900	FEDERAL REVENUE	\$ 620,000	\$ 653,428	\$ (33,428)	105.39%	\$ 35,998
TOTAL REVENUE		\$ 48,192,362	\$ 43,371,619	\$ 4,820,743	90.00%	\$ 7,955,344
EXPENDITURES						
11	INSTRUCTION	\$ 21,777,714	\$ 11,112,755	\$ 10,664,959	51.03%	\$ 1,769,740
12	LIBRARY	\$ 431,950	\$ 219,400	\$ 212,550	50.79%	\$ 31,871
13	STAFF DEVELOPMENT	\$ 317,732	\$ 259,096	\$ 58,636	81.55%	\$ 16,395
21	INST ADMINISTRATION	\$ 1,017,466	\$ 589,358	\$ 428,108	57.92%	\$ 86,801
23	SCHOOL ADMINISTRATION	\$ 2,499,562	\$ 1,501,977	\$ 997,585	60.09%	\$ 206,947
31	GUID AND COUNSELING	\$ 1,278,795	\$ 727,440	\$ 551,355	56.88%	\$ 102,203
32	SOCIAL WORK SERVICES	\$ 62,120	\$ 34,078	\$ 28,042	54.86%	\$ 4,263
33	HEALTH SERVICES	\$ 400,717	\$ 195,677	\$ 205,040	48.83%	\$ 32,432
34	PUPIL TRANSP - REGULAR	\$ 1,831,471	\$ 1,111,196	\$ 720,275	60.67%	\$ 129,374
36	CO-CURRICULAR ACT	\$ 1,709,769	\$ 996,406	\$ 713,363	58.28%	\$ 157,873
41	GEN ADMINISTRATION	\$ 1,555,492	\$ 1,063,994	\$ 491,498	68.40%	\$ 137,474
51	PLANT MAINT & OPERATION	\$ 4,437,611	\$ 3,205,846	\$ 1,231,765	72.24%	\$ 389,700
52	SECURITY & MONITORING	\$ 137,177	\$ 53,356	\$ 83,821	38.90%	\$ 6,306
53	DATA PROCESSING	\$ 2,076,522	\$ 1,680,968	\$ 395,554	80.95%	\$ 96,849
61	COMMUNITY SERVICES	\$ 42,337	\$ 27,144	\$ 15,193	64.11%	\$ 4,662
71	DEBT SERVICE	\$ 523,519	\$ 469,913	\$ 53,606	89.76%	\$ -
81	FACILITIES ACQ & CONST	\$ 257,771	\$ 1,401	\$ 256,370	0.00%	\$ -
91	STUDENT ATTENDANCE CR	\$ 7,863,263	\$ 1,089,434	\$ 6,773,829	13.85%	\$ 1,089,434
99	PURCHASES & CONT SRVS	\$ 755,500	\$ 360,989	\$ 394,511	47.78%	\$ -
TOTAL EXPENDITURES		\$ 48,976,488	\$ 24,700,428	\$ 24,276,060	50.43%	\$ 4,262,324
7000	Other Sources	\$ 740,700	\$ 740,700			\$ -
8000	Other Uses	\$ 600,000	\$ 900,000			\$ 300,000
		Budget	Actual			Month Actual
1200	EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	\$ (643,426)	\$ 18,511,891	EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES		\$ 3,393,020
3000	BEG FUND BAL 07/01/18	\$ 13,121,458				
	BUDGETED FUND BALANCE	\$ (643,426)				
3000	END FUND BAL 06/30/19	\$ 12,478,032	Unaudited			

Marble Falls ISD
Statement of Revenues and Expenditures - Food Service
As of February 28, 2019

67% Of Fiscal Year		CURRENT YEAR YTD				February
		BUDGET	YTD ACTIVITY	BALANCE	% OF BUDGET	ACTIVITY
REVENUES						
57XX	LOCAL REVENUES	\$ 663,834	\$ 449,234	\$ 214,600	67.67%	\$ 70,989
58XX	STATE PROG. REVENUES	\$ 12,000	\$ -	\$ 12,000	0.00%	\$ -
59xx	FEDERAL REVENUE	\$ 1,762,748	\$ 913,609	\$ 849,139	51.83%	\$ 161,697
	TOTAL REVENUE	\$ 2,438,582	\$ 1,362,843	\$ 1,075,739	55.89%	\$ 232,686
EXPENDITURES						
61	PAYROLL COST	\$ 1,004,751	\$ 683,467	\$ 321,284	68.02%	\$ 87,927
62	PURCHASE & CONTRACTED	\$ 92,555	\$ 44,625	\$ 47,930	48.21%	\$ 5,466
63	SUPPLIES AND MATERIALS	\$ 1,327,276	\$ 710,308	\$ 616,968	53.52%	\$ 105,332
64	OTHER OPERATING EXP	\$ 14,000	\$ 7,167	\$ 6,833	51.19%	\$ 1,762
66	CPTL OUTLAY	\$ -	\$ -	\$ -	0.00%	\$ -
	TOTAL EXPENDITURES	\$ 2,438,582	\$ 1,445,567	\$ 993,015	59.28%	\$ 200,487
7000	Other Sources		\$ -			\$ -
8000	Other Uses		\$ -			\$ -
		Budget	Actual			Month Actual
1200	EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	\$ -	\$ (82,724)	EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES		\$ 32,199
3000	BEG FUND BAL 07/01/18	\$ 524,289				
	BUDGETED FUND BALANCE					
3000	END FUND BAL 06/30/19	\$ 524,289	Unaudited			

Marble Falls ISD
Statement of Revenues and Expenditures - Debt Service
As of February 28, 2019

67% Of Fiscal Year		CURRENT YEAR YTD				February
		BUDGET	YTD ACTIVITY	BALANCE	% OF BUDGET	ACTIVITY
REVENUES						
57XX	LOCAL TAX REVENUES	\$ 8,542,609	\$ 8,026,303	\$ 516,306	93.96%	\$ 1,588,176
58XX	STATE PROG. REVENUES	\$ 109,801	\$ 109,800	\$ 1	100.00%	\$ -
59xx	FEDERAL REVENUE	\$ -	\$ -	\$ -	0.00%	\$ -
TOTAL REVENUE		\$ 8,652,410	\$ 8,136,103	\$ 516,307	94.03%	\$ 1,588,176
EXPENDITURES						
65	DEBT SERVICE	\$ 7,083,300	\$ 7,076,300	\$ 7,000	99.90%	\$ 941,250
TOTAL EXPENDITURES		\$ 7,083,300	\$ 7,076,300	\$ 7,000	99.90%	\$ 941,250
7000	Other Sources		\$ -			\$ -
8000	Other Uses		\$ -			\$ -
		Budget	Actual			Month Actual
1200	EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	\$ 1,569,110	\$ 1,059,803	EXCESS (DEFICIENCY) OF REVENUES OVER	0	\$ 646,926
3000	BEG FUND BAL 07/01/18	\$ 9,348,245	0			
BUDGETED FUND BALANCE						
3000	END FUND BAL 06/30/19	\$ 10,917,355	Unaudited			

Marble Falls ISD
Statement of Revenues and Expenditures - General Fund
As of February 28, 2019
(Expenditures include estimated payroll accruals)

67% Of Fiscal Year		CURRENT YEAR YTD				% OF
REVENUES		BUDGET	YTD ACTIVITY	BALANCE		BUDGET
5710	LOCAL TAX REVENUES	\$ 41,543,823	\$ 38,765,331	\$ 2,778,492		93.31%
57XX	OTHER LOCAL REVENUES	\$ 467,837	\$ 526,384	\$ (58,547)		112.51%
58XX	STATE PROG. REVENUES	\$ 5,560,702	\$ 3,426,476	\$ 2,134,226		61.62%
5900	FEDERAL REVENUE	\$ 620,000	\$ 653,428	\$ (33,428)		105.39%
TOTAL REVENUE		\$ 48,192,362	\$ 43,371,619	\$ 4,820,743		90.00%
EXPENDITURES						
11,12	CAMPUS INSTRUCTION					
	Payroll	\$ 21,402,112	\$ 13,697,604	\$ 7,704,508		64.00%
	Supply Budget	\$ 807,552	\$ 475,524	\$ 332,028		58.88%
13	STAFF DEVELOPMENT					
	Payroll	\$ 108,234	\$ 117,343	\$ (9,109)		108.42%
	Supply Budget	\$ 209,498	\$ 141,753	\$ 67,745		67.66%
21,23	CAMPUS INSTRUCTION ADMINISTRATION					
	Payroll	\$ 3,283,493	\$ 2,135,772	\$ 1,147,721		65.05%
	Supply Budget	\$ 233,535	\$ 126,731	\$ 106,804		54.27%
31,32,33,	COUNSELING & HEALTH SVCS					
	Payroll	\$ 1,609,962	\$ 1,074,551	\$ 535,411		66.74%
	Supply Budget	\$ 131,670	\$ 58,770	\$ 72,900		44.63%
34	TRANSPORTATION					
	Payroll	\$ 1,508,841	\$ 912,568	\$ 596,273		60.48%
	Supply Budget	\$ 322,630	\$ 198,628	\$ 124,002		61.57%
36	EXTRA CURRICULAR					
	Payroll	\$ 1,055,458	\$ 622,355	\$ 433,103		58.97%
	Supply Budget	\$ 654,311	\$ 374,051	\$ 280,260		57.17%
41	CENTRAL OFFICE					
	Payroll	\$ 1,177,794	\$ 802,140	\$ 375,654		68.11%
	Supply Budget	\$ 377,698	\$ 261,854	\$ 115,844		69.33%
51	MAINTENANCE					
	Payroll	\$ 2,572,351	\$ 1,829,625	\$ 742,726		71.13%
	Supply Budget	\$ 1,865,260	\$ 1,376,221	\$ 489,039		73.78%
52,53,61	TECHNOLOGY & SECURITY					
	Payroll	\$ 727,614	\$ 492,590	\$ 235,024		67.70%
	Supply Budget	\$ 1,528,422	\$ 1,268,878	\$ 259,544		83.02%
71	DEBT SERVICE - LEASES	\$ 523,519	\$ 469,913	\$ 53,606		89.76%
81	CAPITAL OUTLAY	\$ 257,771	\$ 1,401	\$ 256,370		0.54%
91	RECAPTURE	\$ 7,863,263	\$ 1,089,434	\$ 6,773,829		13.85%
99	APPRAISAL DISTRICT FEES	\$ 755,500	\$ 360,989	\$ 394,511		47.78%
TOTAL EXPENDITURES		\$ 48,976,488	\$ 27,888,695	\$ 21,087,793		56.94%
7000	OTHER SOURCES	\$ 740,700	\$ 740,700	\$ -		
8000	OTHER USES	\$ 600,000	\$ 900,000	\$ (300,000)		
1200	EXCESS (DEFICIENCY) OF REVENUES TO EXPENDITURES	\$ (643,426)	\$ 15,323,624			
3000	BEG FUND BAL 07/01/18	\$ 13,121,458				
	BUDGETED FUND BALANCE	\$ (643,426)				
3000	END FUND BAL 06/30/19	\$ 12,478,032	Unaudited			
3 months Operating		\$ 12,244,122				

Marble Falls Independent School District

Financial Report

March 26, 2019

Check Payment Fund Summary

Expenditure to Budget Report

Check Payment Fund Summary

For Bills Paid

February 1 – February 28, 2019

FUND SUMMARY

FUND	DESCRIPTION	BALANCE SHEET	REVENUE	EXPENSE	TOTAL
180	COMPUTER REPAIR	0.00	0.00	1,246.27	1,246.27
199	GENERAL FUND	67,169.03	-8.30	348,568.55	415,729.28
211	TITLE I PART A, BASIC PROGRAMS	0.00	0.00	5,457.60	5,457.60
224	IDEA PART B FORMULA	0.00	0.00	19,496.58	19,496.58
240	FOOD SERVICE	0.00	53.70	129,274.40	129,328.10
244	VOC. ED.-BASIC GRANT	0.00	0.00	725.00	725.00
287	STOP SCHOOL VIOLENCE	0.00	0.00	12,184.22	12,184.22
289	FEDERAL SPECIAL REVENUE FUND	0.00	0.00	600.00	600.00
499	FOUNDATION GRANTS	0.00	0.00	467.05	467.05
*** Fund Summary Totals ***		67,169.03	45.40	518,019.67	585,234.10

***** End of report *****

Expenditure to Budget Report

March 26, 2019

General Operating Fund

Food Service Fund

Capital Projects

	Obj	Obj	2018-19 ESTIMATED REVENUE	February 2018-19 MTHLY ACTIVITY	2018-19 Activity	REVENUE BALANCE	PERCENT REALIZED	2018-19 YTD %
199		GENERAL FUND						
5700		REVENUE-LOCAL & INTERMED						
	571-	LOCAL REAL-PROPERTY TAXES	41,543,823.00	7,662,896.15	38,765,330.57	2,778,492.43	94.97	93.31
	573-	TUITION & FEES FROM PATRONS	75,000.00	13,403.32	70,750.27	4,249.73	94.33	94.33
	574-	TRANS FROM WITHIN STATE	282,837.49	73,385.63	352,205.18	-69,367.69	124.53	124.53
	575-	ENTERPRISING ACTIVITIES	110,000.00	4,631.00	93,336.91	16,663.09	84.85	84.85
	57--	REVENUE-LOCAL & INTERMED	42,011,660.49	7,754,316.10	39,281,622.93	2,730,037.56	95.14	93.50
5800		STATE PROGRAM REVENUES						
	581-	PER CAPITA-FOUNDATION REV	3,683,263.00	0.00	2,215,070.00	1,468,193.00	60.14	60.14
	582-	STATE REVENUE DISTRBD BY TEA	5,000.00	0.00	0.00	5,000.00	0.00	0.00
	583-	TRS ON BEHALF BENEFIT	1,872,439.00	0.00	1,056,468.13	815,970.87	56.42	56.42
	58--	STATE PROGRAM REVENUES	5,560,702.00	0.00	3,271,538.13	2,289,163.87	58.83	58.83
5900		FEDERAL PROGRAM REVENUES						
	591-	FEDERALLY DIST REVENUES	40,000.00	0.00	40,569.56	-569.56	101.42	101.42
	592-		50,000.00	0.00	87,467.41	-37,467.41	174.93	174.93
	593-	VOC ED NON FOUNDATION	530,000.00	25,059.80	514,453.22	15,546.78	99.64	97.07
	59--	FEDERAL PROGRAM REVENUES	620,000.00	25,059.80	642,490.19	-22,490.19	105.83	103.63
7900		OTHER RESOURCES						
	791-		740,700.00	0.00	740,700.00	0.00	100.00	100.00
	79--	OTHER RESOURCES	740,700.00	0.00	740,700.00	0.00	100.00	100.00
	----	GENERAL FUND	48,933,062.49	7,779,375.90	43,936,351.25	4,996,711.24	91.22	89.79

	Obj	Obj	2018-19 ESTIMATED REVENUE	February 2018-19 MTHLY ACTIVITY	2018-19 Activity	REVENUE BALANCE	PERCENT REALIZED	2018-19 YTD %
240		FOOD SERVICE						
5700		REVENUE-LOCAL & INTERMED						
		574- TRANS FROM WITHIN STATE	1,850.00	54.52	548.95	1,301.05	29.67	29.67
		575- ENTERPRISING ACTIVITIES	661,984.00	70,934.86	448,685.65	213,298.35	67.78	67.78
		57-- REVENUE-LOCAL & INTERMED	663,834.00	70,989.38	449,234.60	214,599.40	67.67	67.67
5800		STATE PROGRAM REVENUES						
		582- STATE REVENUE DISTRBD BY TEA	12,000.00	0.00	0.00	12,000.00	0.00	0.00
		58-- STATE PROGRAM REVENUES	12,000.00	0.00	0.00	12,000.00	0.00	0.00
5900		FEDERAL PROGRAM REVENUES						
		592-	1,762,748.00	161,696.87	913,608.70	849,139.30	51.83	51.83
		59-- FEDERAL PROGRAM REVENUES	1,762,748.00	161,696.87	913,608.70	849,139.30	51.83	51.83
		---- FOOD SERVICE	2,438,582.00	232,686.25	1,362,843.30	1,075,738.70	55.89	55.89

Number of Accounts: 52

***** End of report *****

		2018-19	February 2018-19	2018-19	REVENUE	2018-19
	Obj Obj	ESTIMATED REVENUE	Monthly Activity	Activity	BALANCE	YTD %
199	GENERAL FUND					
	5--- REVENUE	48,192,362.49	7,779,375.90	43,195,651.25	4,996,711.24	89.63
	7--- OTHER RESOURCES	740,700.00	0.00	740,700.00	0.00	100.00
	---- GENERAL FUND	48,933,062.49	7,779,375.90	43,936,351.25	4,996,711.24	89.79
240	FOOD SERVICE					
	5--- REVENUE	2,438,582.00	232,686.25	1,362,843.30	1,075,738.70	55.89
	---- FOOD SERVICE	2,438,582.00	232,686.25	1,362,843.30	1,075,738.70	55.89

Number of Accounts: 52

***** End of report *****

Obj	Obj	2018-19 BUDGET	ENCUMBRANCE YTD	2018-19 EXPENDITURES	February 2018-19 ACTIVITY	2018-19 BALANCE	2018-19 YTD %
199	GENERAL FUND						
00							
	89-- OTHER USES	600,000.00	0.00	900,000.00	300,000.00	-300,000.00	150.00
	----	600,000.00	0.00	900,000.00	300,000.00	-300,000.00	150.00
11	INSTRUCTION						
	61-- PAYROLL COSTS	21,049,439.00	0.00	10,544,627.08	1,590,773.98	10,504,811.92	50.09
	62-- PURCHASE & CONTRACTED SVS	288,411.23	41,938.25	188,288.82	18,664.57	58,184.16	65.28
	63-- SUPPLIES AND MATERIALS	377,074.20	33,824.77	228,859.17	29,315.30	114,390.26	60.69
	64-- OTHER OPERATING EXPENSES	62,789.73	8,297.90	22,358.49	2,364.10	32,133.34	35.61
	---- INSTRUCTION	21,777,714.16	84,060.92	10,984,133.56	1,641,117.95	10,709,519.68	50.44
12	INST. RESOURCES & MEDIA SVCS						
	61-- PAYROLL COSTS	352,673.00	0.00	181,054.25	27,400.51	171,618.75	51.34
	62-- PURCHASE & CONTRACTED SVS	34,766.00	495.47	6,892.64	61.15	27,377.89	19.83
	63-- SUPPLIES AND MATERIALS	41,233.10	3,528.06	26,655.24	2,081.02	11,049.80	64.65
	64-- OTHER OPERATING EXPENSES	3,277.90	440.00	2,469.37	0.00	368.53	75.33
	---- INST. RESOURCES & MEDIA S	431,950.00	4,463.53	217,071.50	29,542.68	210,414.97	50.25
13	CURRICULUM DEV & INST STFF DEV						
	61-- PAYROLL COSTS	108,234.00	0.00	116,670.90	8,063.57	-8,436.90	107.80
	62-- PURCHASE & CONTRACTED SVS	70,068.00	100.00	54,219.55	0.00	15,748.45	77.38
	63-- SUPPLIES AND MATERIALS	71,530.12	2,253.96	50,649.80	2,644.00	18,626.36	70.81
	64-- OTHER OPERATING EXPENSES	67,899.88	9,327.08	36,883.76	5,015.99	21,689.04	54.32
	---- CURRICULUM DEV & INST STF	317,732.00	11,681.04	258,424.01	15,723.56	47,626.95	81.33
21	INSTRUCTIONAL LEADERSHIP						
	61-- PAYROLL COSTS	861,570.00	0.00	501,937.54	59,413.95	359,632.46	58.26
	62-- PURCHASE & CONTRACTED SVS	106,941.52	2,865.69	49,033.38	3,595.40	55,042.45	45.85
	63-- SUPPLIES AND MATERIALS	30,787.86	426.31	21,122.71	15,547.09	9,238.84	68.61
	64-- OTHER OPERATING EXPENSES	18,166.43	1,408.45	12,245.23	3,225.93	4,512.75	67.41

	Obj	Obj	2018-19 BUDGET	ENCUMBRANCE YTD	2018-19 EXPENDITURES	February 2018-19 ACTIVITY	BALANCE	2018-19 YTD %
199		GENERAL FUND						
21		INSTRUCTIONAL LEADERSHIP						
	----	INSTRUCTIONAL LEADERSHIP	1,017,465.81	4,700.45	584,338.86	81,782.37	428,426.50	57.43
23		SCHOOL LEADERSHIP						
	61--	PAYROLL COSTS	2,421,923.00	0.00	1,441,709.86	187,001.25	980,213.14	59.53
	62--	PURCHASE & CONTRACTED SVS	34,478.32	9,685.28	22,043.36	2,961.34	2,749.68	63.93
	63--	SUPPLIES AND MATERIALS	27,828.91	1,661.95	15,510.86	1,008.29	10,656.10	55.74
	64--	OTHER OPERATING EXPENSES	15,331.77	2,089.44	6,775.00	39.00	6,467.33	44.19
	----	SCHOOL LEADERSHIP	2,499,562.00	13,436.67	1,486,039.08	191,009.88	1,000,086.25	59.45
31		GUIDANCE & COUNSELING						
	61--	PAYROLL COSTS	1,169,010.00	0.00	664,259.87	91,295.70	504,750.13	56.82
	62--	PURCHASE & CONTRACTED SVS	82,732.00	37,500.00	39,094.00	1,594.00	6,138.00	47.25
	63--	SUPPLIES AND MATERIALS	17,375.00	818.84	10,955.96	478.61	5,600.20	63.06
	64--	OTHER OPERATING EXPENSES	9,677.65	1,472.00	5,240.87	945.12	2,964.78	54.15
	----	GUIDANCE & COUNSELING	1,278,794.65	39,790.84	719,550.70	94,313.43	519,453.11	56.27
32		SOCIAL WORK SERVICES						
	61--	PAYROLL COSTS	50,120.00	0.00	33,743.93	3,928.62	16,376.07	67.33
	62--	PURCHASE & CONTRACTED SVS	12,000.00	0.00	0.00	0.00	12,000.00	0.00
	----	SOCIAL WORK SERVICES	62,120.00	0.00	33,743.93	3,928.62	28,376.07	54.32
33		HEALTH SERVICES						
	61--	PAYROLL COSTS	390,832.00	0.00	189,723.97	29,166.62	201,108.03	48.54
	62--	PURCHASE & CONTRACTED SVS	675.00	0.00	0.00	0.00	675.00	0.00
	63--	SUPPLIES AND MATERIALS	8,445.00	353.09	3,479.24	792.10	4,612.67	41.20
	64--	OTHER OPERATING EXPENSES	765.00	0.00	0.00	0.00	765.00	0.00
	----	HEALTH SERVICES	400,717.00	353.09	193,203.21	29,958.72	207,160.70	48.21

	Obj	Obj	2018-19 BUDGET	ENCUMBRANCE YTD	2018-19 EXPENDITURES	February 2018-19 ACTIVITY	2018-19 BALANCE	2018-19 YTD %
199		GENERAL FUND						
34		PUPIL TRANSPORTATION						
	61--	PAYROLL COSTS	1,508,841.00	0.00	903,698.50	108,653.55	605,142.50	59.89
	62--	PURCHASE & CONTRACTED SVS	38,925.00	5,848.19	17,600.56	1,305.18	15,476.25	45.22
	63--	SUPPLIES AND MATERIALS	377,505.00	40,948.46	227,292.83	28,693.26	109,263.71	60.21
	64--	OTHER OPERATING EXPENSES	-93,800.00	1,770.62	-46,265.59	-18,147.73	-49,305.03	49.32
	----	PUPIL TRANSPORTATION	1,831,471.00	48,567.27	1,102,326.30	120,504.26	680,577.43	60.19
36		COCURR./EXTRACURR.ACTIVITIES						
	61--	PAYROLL COSTS	1,055,458.00	0.00	614,288.28	93,246.71	441,169.72	58.20
	62--	PURCHASE & CONTRACTED SVS	149,691.16	4,111.06	83,041.79	9,062.60	62,538.31	55.48
	63--	SUPPLIES AND MATERIALS	152,456.30	17,643.52	95,127.46	19,648.16	39,685.32	62.40
	64--	OTHER OPERATING EXPENSES	346,163.54	27,812.44	194,805.90	26,772.34	123,545.20	56.28
	66--	CPTL OUTLY LAND BLDG & EQ	6,000.00	1,500.00	1,075.66	1,075.66	3,424.34	17.93
	----	COCURR./EXTRACURR.ACTIVIT	1,709,769.00	51,067.02	988,339.09	149,805.47	670,362.89	57.81
41		GENERAL ADMINISTRATION						
	61--	PAYROLL COSTS	1,177,794.00	0.00	794,517.24	97,731.38	383,276.76	67.46
	62--	PURCHASE & CONTRACTED SVS	135,168.50	7,446.65	103,412.33	2,117.41	24,309.52	76.51
	63--	SUPPLIES AND MATERIALS	100,947.37	8,193.57	67,503.84	18,696.29	25,249.96	66.87
	64--	OTHER OPERATING EXPENSES	140,081.50	14,091.72	89,921.37	10,289.50	36,068.41	64.19
	66--	CPTL OUTLY LAND BLDG & EQ	1,500.50	483.50	1,016.50	1,016.50	0.50	67.74
	----	GENERAL ADMINISTRATION	1,555,491.87	30,215.44	1,056,371.28	129,851.08	468,905.15	67.91
51		PLANT MAINTENANCE & OPERATIONS						
	61--	PAYROLL COSTS	2,572,351.00	0.00	1,811,381.59	220,063.31	760,969.41	70.42
	62--	PURCHASE & CONTRACTED SVS	1,163,867.35	55,898.76	855,173.09	105,496.50	252,795.50	73.48
	63--	SUPPLIES AND MATERIALS	366,984.85	68,001.29	283,550.35	37,043.48	15,433.21	77.26
	64--	OTHER OPERATING EXPENSES	181,825.00	1,576.33	177,149.74	-398.71	3,098.93	97.43
	66--	CPTL OUTLY LAND BLDG & EQ	152,582.80	8,091.31	60,347.87	9,252.67	84,143.62	39.55
	----	PLANT MAINTENANCE & OPERA	4,437,611.00	133,567.69	3,187,602.64	371,457.25	1,116,440.67	71.83

	Obj	Obj	2018-19 BUDGET	ENCUMBRANCE YTD	2018-19 EXPENDITURES	February 2018-19 ACTIVITY	2018-19 BALANCE	2018-19 YTD %
199		GENERAL FUND						
52		SECURITY & MONITORING SERVICES						
	61--	PAYROLL COSTS	72,177.00	0.00	44,913.66	5,610.32	27,263.34	62.23
	62--	PURCHASE & CONTRACTED SVS	62,500.00	160.00	6,436.48	175.00	55,903.52	10.30
	63--	SUPPLIES AND MATERIALS	2,500.00	69.61	1,515.05	30.39	915.34	60.60
	----	SECURITY & MONITORING SER	137,177.00	229.61	52,865.19	5,815.71	84,082.20	38.54
53		DATA PROCESSING SERVICES						
	61--	PAYROLL COSTS	613,700.00	0.00	416,419.88	45,878.76	197,280.12	67.85
	62--	PURCHASE & CONTRACTED SVS	225,943.30	19,990.58	205,599.93	7,664.59	352.79	91.00
	63--	SUPPLIES AND MATERIALS	458,893.54	58,367.18	281,889.94	38,875.43	118,636.42	61.43
	64--	OTHER OPERATING EXPENSES	37,285.02	0.00	32,314.38	385.85	4,970.64	86.67
	66--	CPTL OUTLY LAND BLDG & EQ	740,700.00	0.00	740,700.00	0.00	0.00	100.00
	----	DATA PROCESSING SERVICES	2,076,521.86	78,357.76	1,676,924.13	92,804.63	321,239.97	80.76
61		COMMUNITY SERVICES						
	61--	PAYROLL COSTS	41,737.00	0.00	26,324.82	4,265.64	15,412.18	63.07
	64--	OTHER OPERATING EXPENSES	600.00	0.00	422.64	0.00	177.36	70.44
	----	COMMUNITY SERVICES	42,337.00	0.00	26,747.46	4,265.64	15,589.54	63.18
71		DEBT SERVICES						
	65--	DEBT SERVICE	523,519.70	0.00	469,913.31	0.00	53,606.39	89.76
	----	DEBT SERVICES	523,519.70	0.00	469,913.31	0.00	53,606.39	89.76
81		FACILITIES ACQ. & CONSTRUCTION						
	64--	OTHER OPERATING EXPENSES	2,500.00	0.00	1,401.36	0.00	1,098.64	56.05
	66--	CPTL OUTLY LAND BLDG & EQ	255,271.00	0.00	0.00	0.00	255,271.00	0.00
	----	FACILITIES ACQ. & CONSTRU	257,771.00	0.00	1,401.36	0.00	256,369.64	0.54

	Obj	Obj	2018-19 BUDGET	ENCUMBRANCE YTD	2018-19 EXPENDITURES	February 2018-19 ACTIVITY	2018-19 BALANCE	2018-19 YTD %
199		GENERAL FUND						
91		INTERGOVERNMENTAL CHARGES						
	62--	PURCHASE & CONTRACTED SVS	7,863,263.00	0.00	1,089,434.00	1,089,434.00	6,773,829.00	13.85
	----	INTERGOVERNMENTAL CHARGES	7,863,263.00	0.00	1,089,434.00	1,089,434.00	6,773,829.00	13.85
99		OTHR INTERGOVERNMENTAL CHARGES						
	62--	PURCHASE & CONTRACTED SVS	755,500.00	0.00	360,989.06	0.00	394,510.94	47.78
	----	OTHR INTERGOVERNMENTAL CH	755,500.00	0.00	360,989.06	0.00	394,510.94	47.78
	----	GENERAL FUND	49,576,488.05	500,491.33	25,389,418.67	4,351,315.25	23,686,578.05	51.21

	Obj	Obj	2018-19 BUDGET	ENCUMBRANCE YTD	2018-19 EXPENDITURES	February 2018-19 ACTIVITY	2018-19 BALANCE	2018-19 YTD %
240		FOOD SERVICE						
35		FOOD SERVICES						
	61--	PAYROLL COSTS	1,004,751.00	0.00	678,331.60	82,791.68	326,419.40	67.51
	62--	PURCHASE & CONTRACTED SVS	92,555.00	6,111.69	44,625.28	5,466.54	41,818.03	48.21
	63--	SUPPLIES AND MATERIALS	1,327,276.00	379,260.41	710,308.35	105,332.19	237,707.24	53.52
	64--	OTHER OPERATING EXPENSES	14,000.00	434.92	7,166.83	1,762.08	6,398.25	51.19
	----	FOOD SERVICES	2,438,582.00	385,807.02	1,440,432.06	195,352.49	612,342.92	59.07
	----	FOOD SERVICE	2,438,582.00	385,807.02	1,440,432.06	195,352.49	612,342.92	59.07

Number of Accounts: 2289

***** End of report *****

		2018-19	ENCUMBRANCE	2018-19	February	2018-19	
	Obj Obj	BUDGET	YTD	EXPENDITURES	ACTIVITY	BALANCE	YTD %
199	GENERAL FUND						
	6--- EXPENDITURES	48,976,488.05	500,491.33	24,489,418.67	4,051,315.25	23,986,578.05	50.00
	8--- OTHER USES	600,000.00	0.00	900,000.00	300,000.00	-300,000.00	150.00
	---- GENERAL FUND	49,576,488.05	500,491.33	25,389,418.67	4,351,315.25	23,686,578.05	51.21
240	FOOD SERVICE						
	6--- EXPENDITURES	2,438,582.00	385,807.02	1,440,432.06	195,352.49	612,342.92	59.07
	---- FOOD SERVICE	2,438,582.00	385,807.02	1,440,432.06	195,352.49	612,342.92	59.07

Number of Accounts: 2289

***** End of report *****

End T	Fn	Obj	Sb	Org	F	Pr	L	L2	End	Obj									
Date	Src	Sub	Batch	Vendor Name/Ref	PO#/Line#	Description	Inv#/Desc2	Inv Date	Chk#/Rec#	Check Date	Amount								
651 R 00 7915	00	000	0	00	0	00	CPF - MAINTENANCE			OPERATING TRANSFERS IN									
02/07/19	JE		18-00457		4			02/07/19			-300,000.00								
						February					-300,000.00								
						*651 R 00 7915 00 000 0 00 0 00					-300,000.00								
						*Journal Entries					-300,000.00								
651 R 00 79--	--	--	--	--	--	--	CPF - MAINTENANCE												
651 R 00 ----	--	--	--	--	--	--	CPF - MAINTENANCE												
651 E 81 6629	42	934	0	99	0	00	CPF - MAINTENANCE			BUILDING PURCHASE/CONST/IMPRVM									
02/05/19	AP			JS			NELSON LEWIS INC			6001900047 MT - TD RELOCATION PRK AREAS	7	01/25/19	1744	02/08/19		291,314.65			
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	01994	01/22/19	1748	02/15/19		3.88			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	01094	01/23/19	1748	02/15/19		17.48			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	01262	01/25/19	1748	02/15/19		104.41			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	02579	01/24/19	1748	02/15/19		82.40			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	02568	01/31/19	1748	02/15/19		220.11			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	15629	01/30/19	1748	02/15/19		-574.03			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	15624	01/30/19	1748	02/15/19		-100.05			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	02389	01/29/19	1748	02/15/19		674.08			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900045 WO#11453-TD REMODEL OLD	16525	01/30/19	1748	02/15/19		607.58			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900044 W.O. #11453 - TD REMODEL OLD	02099	01/15/19	1748	02/15/19		42.57			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900044 W.O. #11453 - TD REMODEL OLD	01816	01/18/19	1748	02/15/19		17.82			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900044 W.O. #11453 - TD REMODEL OLD	02336	01/03/19	1748	02/15/19		150.33			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900044 W.O. #11453 - TD REMODEL OLD	01821	01/07/19	1748	02/15/19		131.32			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900044 W.O. #11453 - TD REMODEL OLD	01078	01/09/19	1748	02/15/19		64.02			
							PORTABLE												
02/14/19	AP			JS			LOWE'S			6001900044 W.O. #11453 - TD REMODEL OLD	02400	01/10/19	1748	02/15/19		27.87			

Fnd T Fn Obj Sb Org F Pr L L2 Fnd

Obj

651 E 81 6629 42 934 0 99 0 00 (continued)

Date	Src	Sub	Batch	Vendor Name/Ref	PO#/Line#	Description	Inv#/Desc2	Inv Date	Chk#/Rec#	Check Date	Amount
02/14/19	AP		JS	LOWE'S	6001900044	PORTABLE W.O. #11453 - TD REMODEL OLD	01321	01/11/19	1748	02/15/19	42.72
02/14/19	AP		JS	LOWE'S	6001900045	PORTABLE WO#11453-TD REMODEL OLD	915632	01/30/19	1748	02/15/19	-89.65
02/14/19	AP		JS	SHERWIN-WILLIAMS CO	6001900046	PORTABLE WO#11453-TD REMODEL OLD	18695	01/17/19	1749	02/15/19	23.01
02/14/19	AP		JS	UNITED RENTALS (NORTH AMERICA) INC	6001900043	PORTABLE W.O. #9129 - TD RELOCATION PRK LOT LTS	165457375003	02/04/19	1750	02/15/19	2,900.00
02/14/19	AP		JS	UNITED RENTALS (NORTH AMERICA) INC	6001900050	W.O. #9129 - TD RELOCATION PRK LOT LIGHTS	165457375003	02/04/19	1750	02/15/19	337.86
02/28/19	AP		JS	FERGUSON ENTERPRISES INC #1869	6001900049	WO#9129-TD-NEW CONST. & ELEC	6665959	02/11/19	1751	03/01/19	122.61
02/28/19	AP		JS	INGRAM READYMIX INC	6001900048	W.O. #9129 - TD RELOCATION	6094382	02/13/19	1755	03/01/19	1,833.50
02/28/19	AP		JS	HOLT ENGINEERING, INC	6001900052	FUELING AREA MT - TD SITE RELOCATION	06224183	02/21/19	1752	03/01/19	3,983.10
February											301,937.59

P.O. #	*Year	Description	Vendor	P.O. Date	PO Amount	PO Enc Amount	Liquidated	Adj Enc Amount	Amount Open	Sts
6001900010	2018	W.O. #9129 - TD SITE RELOCATIO	ELLIOTT ELECTRIC SUP	08/29/2018	1,000.00	1,000.00	488.84	0.00	511.16	O
6001900016	2018	MT - TD SITE RELOCATION RESTRO	MOBILE MODULAR MANAG	10/31/2018	31,622.00	31,622.00	18,608.50	0.00	13,013.50	O
6001900021	2018	W.O. #9129 - TD SITE RELOCATIO	ELLIOTT ELECTRIC SUP	11/30/2018	1,000.00	1,000.00	799.68	0.00	200.32	O
6001900022	2018	WO#9129-NEW TD-CONST/ELECT	FERGUSON ENTERPRISES	12/03/2018	1,000.00	1,000.00	479.29	0.00	520.71	O
6001900030	2018	WO#11453-TD RELOCATION-AC SYST	RMI	12/11/2018	102.39	102.39	0.00	0.00	102.39	O
6001900033	2018	WO#9129-TD RELOCATION-WATER LI	FERGUSON ENTERPRISES	12/17/2018	36.71	36.71	0.00	0.00	36.71	O
6001900036	2018	WO#11453-TD/REMODEL OLD PORTAB	ELLIOTT ELECTRIC SUP	01/10/2019	98.74	98.74	0.00	0.00	98.74	O
6001900037	2018	WO#11453-TD REMODEL OLD PORTAB	ELLIOTT ELECTRIC SUP	01/10/2019	133.96	133.96	36.48	0.00	97.48	O
6001900041	2018	W.O. #9129 - ELEC TO PRK LOT L	ELLIOTT ELECTRIC SUP	01/15/2019	3,500.00	3,500.00	0.00	0.00	3,500.00	H
6001900042	2018	WO#11453-TD RELOCATION/ELECT	ELLIOTT ELECTRIC SUP	01/15/2019	19.43	19.43	0.00	0.00	19.43	H
6001900044	2018	W.O. #11453 - TD REMODEL OLD P	LOWE'S OF MARBLE FAL	01/22/2019	1,500.00	1,500.00	476.65	0.00	1,023.35	O
6001900045	2018	WO#11453-TD REMODEL OLD PORTAB	LOWE'S OF MARBLE FAL	02/01/2019	2,000.00	2,000.00	946.21	0.00	1,053.79	O
6001900046	2018	WO#11453-TD REMODEL OLD PORTAB	SHERWIN-WILLIAMS CO	02/01/2019	250.00	250.00	23.01	0.00	226.99	O
6001900051	2018	MT - TD RELOCATION FUELING ARE	ULINE INC	02/21/2019	298.70	298.70	0.00	0.00	298.70	H
*Total					42,561.93	42,561.93	21,858.66	0.00	20,703.27	
*651 E 81 6629 42 934 0 99 0 00									301,937.59	
*Accounts Payable									301,937.59	

651 E 81 6629 46 103 0 99 0 00 CPF - MAINTENANCE

BUILDING PURCHASE/CONST/IMPRVM

P.O. #	*Year	Description	Vendor	P.O. Date	PO Amount	PO Enc Amount	Liquidated	Adj Enc Amount	Amount Open	Sts
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* The Year column displays the first year of the fiscal year pair (2019 for 2019-2020).

Fnd T Fn Obj Sb Org F Pr L L2 Fnd Obj														
651 E 81 6629 46 103 0 99 0 00 (continued)														
Date		Src	Sub	Batch	Vendor Name/Ref			PO#/Line#	Description	Inv#/Desc2	Inv Date	Chk#/Rec#	Check Date	Amount
P.O. #		*Year	Description			Vendor		P.O. Date	PO Amount	PO Enc Amount	Liquidated	Adj Enc Amount	Amount Open	Sts
6001900021		2018	W.O. #9129 - TD SITE RELOCATIO			ELLIOTT ELECTRIC SUP		11/30/2018	0.00	0.00	0.00	0.00	0.00	O
			*Total						0.00	0.00	0.00	0.00	0.00	
								*651 E 81 6629 46 103 0 99 0 00						0.00
651 E 81 66-- -- --- - -- - -- CPF - MAINTENANCE														
651 E 81 ---- -- --- - -- - -- CPF - MAINTENANCE														
651 - -- ---- -- --- - -- - -- CPF - MAINTENANCE														

Total for Accounts Payable

301,937.59

Total for Journal Entries

-300,000.00

Grand Total

1,937.59

Number of Accounts: 3

** The report displays only accounts with activity in the date range selected.

***** End of report *****



**LEARNERS TODAY,
LEADERS TOMORROW,
MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3/14/2019	Agenda Placement: ☐ Public Hearing ☒ Information Items ☐ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: MFHS Head Football Coach Search Summary		
Executive Summary: Marble Falls High School head football coach search has developed a defined process and time line that will be utilized to locate the next head football coach. The time line began on March 11th with the posting of the position. The district will accept applications through April 1st. An established committee will review applications, select candidates to interview and hold interviews prior to April 11th. The April Board Meeting will be the identified timing for Dr. Allen to make a recommendation to the Board of Trustees.		
Fiscal Impact: Cost: ☒ Recurring ☐ One-Time ☐ No Fiscal Impact	Funding Source: ☒ General Fund ☐ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Information item only		
Submitted By: Dr. Jeff Gasaway		
Board Approval Required: ☐ Yes ☒ No		

Marble Falls ISD

Head Football Coach Search Timeline

1. POST POSITION- March 11, 2019

- a. Control Form to Vicki to Post Position March 11, 2019
- b. Position to Open on March 11, 2019
- c. Position to Close on April 1, 2019
 - i. Create auto-reply to candidates with time line through Applitrac

2. Profile Input-March 11, 2019 through April 1, 2019

- a. Athletic Staff Input - through Coach Hoover
- b. High School Staff Input – through Community Meeting
- c. Parent/Student Input – through Community Meeting
- d. High School Administration Input – through Mr. Adams
- e. Cabinet Input

3. Profile Development – By April 1, 2019

- a. Building candidate profile at Community Meeting on April 1 at MFHS.

4. Screen Applicants and Set Interviews- By March 28, 2019

- a. Screen Applicants/Select Candidates by March 28, 2019 – 309/310 at Central Office
- b. May have a few additional resumes to review on April 1, 2019

5. Committee Interviews Selected Candidates for 15-minute interview on April 4, 2019

- a. Will be completed by Assistant Superintendent and Athletic Director

6. Second Round Interview – April 9 and 10, 2019

- a. Committee will interview 8 candidates. Candidates will receive a tour of athletic facilities.
 - i. Reserve location to hold interviews
 - ii. Create candidate packets for committee
 - iii. Arrange for refreshments/meal
- b. After all interviews have been completed, Committee will collaborate and determine which candidates to send to Dr. Allen.

7. Superintendent Interviews Selected Candidate – April 11, 2019

- a. Superintendent's Office will set up interviews with selected candidates

8. Recommendation to the Board – April 15, 2019

- a. Superintendent will make final recommendation to the School Board at the regular meeting scheduled April 15, 2019.

DRAFT

DRAFT



**LEARNERS TODAY,
LEADERS TOMORROW,
MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: March 13, 2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Approval of IMA Purchase		
Executive Summary: MFISD has completed our process to select instructional materials for Language Arts Classes for PK-5 and 6-8 grades for use beginning in the 2019-2020 school year as part of the most recent IMA Proclamation. The purpose of this presentation is to present the publishers and maximum amounts for your approvals. We will come to you next month asking for formal approval to purchase the instructional materials presented through the IMA. In order to comply with the requirements for purchasing through the instructional materials allotment, the Curriculum & Instruction Department certifies that materials purchased through use of the Instructional Materials Allotment cover all of the required TEKS in the required curriculum for students and that we will comply with any requests from the State Board of Education for information related to publishers and titles of materials purchased.		
Fiscal Impact: Cost: ☐ Recurring ☒ One-Time ☐ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☐ Bond Funds ☒ Other Funds (Specify) Instructional Mate	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: This is a first reading. No approval is being sought.		
Submitted By: Wes Cunningham		
Board Approval Required: ☐ Yes ☒ No		



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Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3/15/2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Child Nutrition Update		
Executive Summary: Last month, administration discussed Child Nutrition prices for breakfast and lunch. The administration would like to present an overall picture of our Child Nutrition Program, the work done to provide top rate meals, and highlight some of the great work being done by our Child Nutrition Staff.		
Fiscal Impact: Cost: ☐ Recurring ☐ One-Time ☒ No Fiscal Impact	Funding Source: ☒ General Fund ☐ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: 2019-20 Amendment Required? ☐ Yes ☒ No
Administration's Recommendation:		
Submitted By: Mary Davidson/Dr. Jeff Gasaway		
Board Approval Required: ☐ Yes ☒ No		

Marble Falls ISD Child Nutrition Department

- Non-profit department within the school district that provides high quality, low-cost, nutritious meals to every student, ensuring their optimal health and well-being in a pleasant environment while maintaining Local, State and Federal Guidelines.
- Inspire and support school nutrition professionals in advancing the accessibility, quality and integrity of school nutrition programs.

What its' all about

- About providing the best quality food and services to our students.
- Making sure everyday there will be something that every kid will want to eat.
- Keeping the prices as low as possible without having to sacrifice food quality, selection of choices or quantity.
- Adequate staff to offer a quality level of service to all students, staff and administrators.



Inspiring Staff

- **Annual Training:**
Host Hill Country School Food Service Team meeting with surrounding school food service departments for training, support and new ideas.
- Serve Safe Certification for all Managers and Assistant Managers or Cooks.
- Food Handlers classes provided to all food service staff.
- 2 Day Professional Standards Training
- **Monthly Meetings:**
Managers
Kitchen Staff
HACCP
Risk Management Safety – 3 times year



Community

- National School Lunch Week
- National School Breakfast Week
- Annual Thanksgiving Lunch
- Pirate Week Celebration
- Dr. Seuss Week Celebration
- Member of Burnet County Hunger Alliance
- Share Tables in all school cafeterias
- TDA Audit Excellent Rating – last 2 reviews
- A+ Kitchen Health Inspections – 3 years running
- Free Summer Meals all kiddos Ages 1-18



What's a meal

A Reimbursable Meal?

Breakfast offer verses serve- Requirements

1. All three components of the School Breakfast Pattern must be offered to all students prior to the point-of-service.
2. The offered serving size of those three components must be consistent with the meal pattern.
3. The student must select at least of two the three offered components to be reimbursable.

Lunch offer verses serve- Requirements

1. All five components of the School Lunch Pattern must be offered to all students prior to the point-of-service.
2. The offered serving size of those five components must be consistent with the meal pattern.
3. At least three full portions of the five food components must be taken for a lunch to be reimbursable.

Lunch

- 1 Meat- Lean meat, poultry or fish
Meat alternate, Cheese, eggs, peanut butter, beans
- 1 serving bread grain
- 1 serving vegetable
- 1 Serving fruit
- 1 Milk

Breakfast

- 2 bread servings or 1 bread & 1 meat serving
- 1 Juice serving or fruit
- 1 Milk

It's complicated...

Meal Components- All Breakfast \ Lunch MUST have 1/2 cup of Fruit or Vegetable

Food Inspiration



We offer special to be special

What our school Menus offer!

- Elementary
 - Entrees' – 4
 - Vegetables – 2
 - Fruits – 2
 - Bread/grains – 2
- Middle School
 - Entrees' – 11
 - Vegetables – 2
 - Fruits – 2
 - Bread/grains – 2
- High School
 - Entrees' – 20+
 - Vegetables – 2
 - Fruits – 2
 - Bread/grains – 2



Other District Menus offer

- Elementary
 - Entrees' – 2-3
 - Vegetables – 2
 - Fruits – 1
 - Bread/grains – 2
- Middle School
 - Entrees' – 4
 - Vegetables – 2
 - Fruits – 2
 - Bread/grains – 2
- High School
 - Entrees' – 4
 - Vegetables – 2
 - Fruits – 2
 - Bread/grains – 2

Striving for quality low cost program

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		Revenue & Expenditure 4 year Comaprison							
		15-16		16-17		17-18		18-19	
Revenue		173	Per day	173	Per day	171	Per day	95	Per day
5700-5900	Local Revenues	\$2,245,498	\$12,980	\$2,396,058	\$13,850	\$2,369,244	\$13,855	1,291,854	\$13,598
	Meals	649780	3756	694171	4013	662461	3874	387792	4082
	Food Cost Per Meal	\$887,188	\$0.73	\$858,221	\$0.81	\$842,093	\$0.79	\$437,104	\$0.89
Expenditures									
6100	Payroll	\$998,771	\$5,773	\$866,331	\$5,008	\$1,002,032	\$5,860	595,540	\$6,269
6200	Contracted Services	\$84,098	\$486	\$66,148	\$382	\$98,218	\$574	39,159	\$412
6300	Supplies	\$1,167,503	\$6,749	\$1,311,655	\$7,582	\$1,371,713	\$8,022	604,976	\$6,368
6400	Other Operating	\$11,807	\$68	\$13,252	\$77	\$15,813	\$92	5,406	\$57
6600	Capital Outlay **	\$176,474	\$1,020	\$0	\$0	\$0	\$0	\$0	\$0
		\$2,438,653	\$14,096.26	\$2,257,386	\$13,048.47	\$2,487,776	\$14,548.40	1,245,081	\$13,106.12
	Balance	-\$193,155	-\$1,117	\$138,672	\$802	-\$118,532	-\$693	46,773	\$492 *
		** Admin & Board Room Kitchen Remodel						* Meals, revenue & expenses remain constant-no changes from now to May 2019	



Child Nutrition

Functions of Child Nutrition Services

- *National School Lunch and Breakfast Program*
- *Summer Food Feeding Program*
- *USDA Commodity Program*
- *USDA Farm to School Program*
- *After School Snack Program*
- *Special Events Catering*
- *HACCP (Hazard Analysis and Critical Control Point)*
- *Health and Safety Code*
- *School Wellness Policy*

Child Nutrition Services

■ National School Lunch and Breakfast Program

- Free and Reduced Applications
- Verification
- Menu Planning
- Meal Patterns
- Nutritional Requirements
- Meal Pricing
- Counting and Claiming
- Reimbursement
- Food Production Records
- Child Nutrition Labeling
- Smart Snacks Nutrition Policy
 - www.squaremeals.org Smart Snacks Policy
- Offer vs. Serve
- www.mfisd.net Child Nutrition Services

■ After School Snack Program

- Eligible Programs
- Sites
- Eligibility
- Reimbursement
- Meal Patterns
- Production Records
- www.mfisd.net Child Nutrition Services

■ Summer Food Service Program

- Menu Planning
- Meal Patterns
- Nutritional Requirements
- Counting and Claiming
- Reimbursement
- Food Production Records
- Child Nutrition Labeling
- Offer vs. Serve
- www.summerfood.org

■ USDA Commodity Program

- Food Processing
- Farm to School
- Fruits and Vegetables

■ Special Event Catering

- Student Advisory
- A-TEAM
- Tech Teach Reception
- Retirement Reception + more...

■ HACCP

- Standard Operating Procedures
- Standard Operating Procedures Record Keeping

■ Health and Safety Code

- Food Safety Inspections

■ School Wellness Policy

- Nutritional Guidelines
- Nutrition Education

Paid Meal Price Regulation

- Schools are required to charge students for paid meals at a price that is, on average, equal to the difference between free meal reimbursement and the paid meal reimbursement.
- Schools that currently charge less for meal prices than the amount needed to create paid lunch equity are required to;
 - (1) gradually increase their prices over time until they meet the requirement or
 - (2) supplement their food service operating funds with non-federal funds to ensure equity.
- For SY 2018-19, SFAs which, on a weighted average, charged less than the target weighted average price of \$2.92 for paid lunches in SY 2017-18 are required to adjust their weighted average lunch price or add non-Federal funds to the non-profit school food service account.
- The amount per meal increase will be calculated using 2 percent rate increase plus the Consumer Price Index (2.31 percent), totaling 4.31 percent.

Paid Lunch Equity

Below are sections of the PLE tool provided by USDA that help CN Dept. determine the required increases from year to year.

SY 2018-19 Weighted Average Price Requirement	
Requirement price to the nearest cent	<i>Optional</i> price requirement ROUNDED DOWN to nearest 5 cent
\$ 2.26	\$ 2.25
<i>Note: Above prices are based on adjusting SY 2017-18 price requirement by the 2% rate increase plus the Consumer Price Index (2.31%)</i>	

Total Price Increase for SY 2018-19	
\$	0.26
Required price increase for SY 2018-19 (with 10 cent cap)	
\$	2.09
Remaining increase carried forward to SY 2019-20	
\$	0.16
Remaining credit carried forward to SY 2019-20	
\$	-

Paid Lunch Equity Cont'd

How weighted average is calculated

SY 2017-18 Weighted Average Price Calculator			
Enter the paid prices and number of paid lunches sold at each price for October 2017.			
Monthly # of Paid Lunches	Paid Lunch Price	Monthly Revenue	SY 2017-18 Weighted Average Price
2,005	\$ 1.85	\$ 3,709.25	
2,448	\$ 1.85	\$ 4,528.80	
1,475	\$ 1.85	\$ 2,728.75	
1,414	\$ 1.85	\$ 2,615.90	
4,819	\$ 2.10	\$ 10,119.90	
61	\$ 2.10	\$ 128.10	
3,938	\$ 2.10	\$ 8,269.80	
		\$ -	
		\$ -	
		\$ -	
16,160		\$ 32,100.50	\$ 1.99
Note: SY 2017-18 Weighted Average Price equal to or above the target price of \$2.92 are compliant for SY 2017-18. \$2.92 is the difference between the Free and Paid reimbursement rates for SY 2017-18.			

Tool used to achieve the new weighted average price

Monthly # of Paid Lunches	Paid Lunch Price	Monthly Revenue	Weighted Average Price
7,342	\$ 2.00	\$ 14,684.00	
		\$ -	
8,818	\$ 2.50	\$ 22,045.00	
		\$ -	
		\$ -	
		\$ -	
		\$ -	
		\$ -	
		\$ -	
		\$ -	
16,160		\$ 36,729.00	\$ 2.27

*counts from October 2017 for 2018-2019 paid price determinations

Paid Lunch Equity 2019-2020

- Schools are required to set paid meal prices equal to the difference between free meal reimbursement and the paid meal reimbursement.

19-20 Lunch Example: Free Meal Reimbursement	\$ 3.39
<u>Paid Meal Reimbursement</u>	<u>-\$ 0.39</u>
Required Paid Meal Price	\$ 3.00

<https://www.fns.usda.gov/school-meals/paid-lunch-equity-guidance-school-year-2018-19>

Current Weighted average price

\$1.98

Weighted Average *Lunch* Price per USDA regulation for 18-19

\$2.27 (\$0.73 behind)

Weighted Average *Breakfast* Price per USDA regulation for 18-19

\$1.83 (\$0.78 behind)

Our Values

- Integrity: Act ethically and responsibly, always.
- Inclusion: Embrace different perspectives and ideas from our students, teaching and child nutrition staff.
- Collaboration: Share strategies and solutions to achieve professional excellence.
- Commitment: Embody care and compassion for student well-being.
- Innovation: Drive change with creativity and strategic thinking.
- Courage: Resolve to protect and defend school nutrition programs.

Questions about our Child Nutrition Program?

Free Breakfast for Students

- We anticipate Free Breakfast would be a cost to the program of approximately \$45,000
 - Loss of Revenue
 - Increase in Food Costs
- As we have been building the budget for the 2019-2020 program, we would want to make further adjustments to lunch prices to offset the cost of free breakfast.
 - Anticipate that we would need to add an additional \$0.10 to all lunch prices. (\$2.10/\$2.60)



Quick refresh from last meeting



Historical Background

- 17-18: \$118,532 loss – first loss in seven years.
- Contributing Factors: food, paper supplies, payroll and benefit costs have increased an average of 2% each year - an estimated 10%. An additional factor include student participation.
- Last meal price increase was April 2015.



Area District Meal Prices Comparison

Breakfast Prices											
	Llano ISD	Burnet CISD	Marble Falls	Dripping Springs ISD	Kerrville ISD	Leander ISD	Round Rock ISD	Fredericksburg ISD	Liberty Hill ISD	Georgetown ISD	Lampasas ISD
Elementary	Free	Free	\$1.00	\$1.35	\$1.50	\$1.50	\$1.50	\$1.60	\$1.65	\$1.65	\$1.75
Middle School			\$1.10	\$1.50				\$1.75			
High School	\$1.50	Free	\$1.10	\$1.60	\$1.50	\$1.75	\$1.50	\$1.85	\$1.80	\$1.90	\$1.75
Adult	\$2.50	\$2.20	\$2.00	\$1.90	\$2.00	\$2.25	\$2.25	\$2.85	\$2.50	\$2.75	\$2.25
Lunch Prices											
	Llano ISD	Burnet CISD	Marble Falls	Dripping Springs ISD	Kerrville ISD	Leander ISD	Round Rock ISD	Fredericksburg ISD	Liberty Hill ISD	Georgetown ISD	Lampasas ISD
Elementary	Free	\$2.40	\$1.85	\$2.75	\$2.25	\$2.70	\$2.80	\$2.65	\$2.65	\$2.70	\$2.50
Middle School			\$2.10	\$2.95				\$2.95			
High School	\$2.70	\$2.90	\$2.10	\$3.75	\$2.50	\$2.95	\$3.05	\$3.25	\$2.90	\$2.95	\$2.75
Adult	\$4.00	\$3.70	\$3.50	\$3.75	\$3.25	\$4.00	\$3.65	\$4.00	\$3.60	\$3.75	\$3.50



Marble Falls ISD Numbers and Participation

Approved Eligibility		Free		Reduced		Paid	
	Colt	60%	386	7%	46	33%	211
	Highland	77%	467	10%	60	13%	82
	MF Elem	61%	364	6%	36	33%	198
	Spicewood	42%	91	7%	13	52%	114
	Falls	64%	23	6%	2	31%	11
	Middle School	51%	487	8%	73	59%	560
	High School	46%	560	6%	68	49%	596
		Students effected by increase				Total	1772
Program Participation by Meal Period							
				Paid %			Paid %
		Breakfast		Participating	Lunch		Participating
	Elem	43%	605	260	70%	605	423
	Sec	16%	1167	186	51%	1167	595



Meal Price Recommendation

Marble Falls ISD Meal Prices			
	Current Student Breakfast	19-20 increase	New Student Breakfast Price
Elementary	\$1.00	\$0.25	\$1.25
Secondary	\$1.10	\$0.40	\$1.50
	Current Student Lunch Price	19-20 increase	New Student Lunch Price
Elementary	\$1.85	\$0.15	\$2.00
Secondary	\$2.10	\$0.40	\$2.50
	Current Adult Bkfst	19-20 increase	New Proposed Adult Breakfast Price
Elementary	\$2.00	\$0.50	\$2.50
Secondary	\$2.00	\$0.50	\$2.50
	Adult Lunch	19-20 increase	New Proposed Adult Lunch Price
Elementary	\$3.50	\$0.50	\$4.00
Secondary	\$3.50	\$0.50	\$4.00



Area District Meal Prices Comparison after Increase

Elementary Breakfast

School District	Elementary Student Breakfast
Marble Falls	\$1.25
Dripping Springs ISD	\$1.35
Kerrville ISD	\$1.50
Leander ISD	\$1.50
Round Rock ISD	\$1.50
Fredericksburg ISD	\$1.60
Liberty Hill ISD	\$1.65
Georgetown ISD	\$1.65
Lampasas ISD	\$1.75



Area District Meal Prices Comparison after Increase — Elementary Lunch

School District	Elementary Student Lunch
Marble Falls	\$2.00
Burnet CISD	\$2.40
Dripping Springs ISD	\$2.75
Kerrville ISD	\$2.25
Leander ISD	\$2.70
Round Rock ISD	\$2.80
Fredericksburg ISD	\$2.65
Liberty Hill ISD	\$2.65
Georgetown ISD	\$2.70
Lampasas ISD	\$2.50



Area District Meal Prices Comparison after Increase

Secondary Breakfast

School District	Secondary Student Breakfast
Marble Falls	\$1.50
Llano ISD	\$1.50
Dripping Springs ISD	\$1.60
Kerrville ISD	\$1.50
Leander ISD	\$1.75
Round Rock ISD	\$1.50
Fredericksburg ISD	\$1.85
Liberty Hill ISD	\$1.80
Georgetown ISD	\$1.90
Lampasas ISD	\$1.75



Area District Meal Prices Comparison after Increase — Secondary Lunch

School District	Secondary Student Lunch
Marble Falls	\$2.50
Burnet CISD	\$2.90
Llano ISD	\$2.70
Dripping Springs ISD	\$3.75
Kerrville ISD	\$2.50
Leander ISD	\$2.95
Round Rock ISD	\$3.05
Fredericksburg ISD	\$3.25
Liberty Hill ISD	\$2.90
Georgetown ISD	\$2.95
Lampasas ISD	\$2.75



Child Nutrition Budget and Fund Balance

- Fund Balance 2017-2018: \$642,821
- Fund Balance as of Feb. 11, 2019: \$524,289
- 17-18 SY our program suffered a loss of -\$118,532, first time in seven years. Over the last 5 years, Child Nutrition expenses have increased - an estimated 10% overall. Food, paper supplies, payroll & benefit costs up an average of +2% a year.
- Federal Revenues for Free & Reduced increase \$0.08- \$0.09 and Paid only \$0.01 each year.
- A la Carte & Catering cover expenses that Federal Revenues do not. A la Carte is now consistent throughout the district and will help generate added revenue.
- With the additional revenues and the meal increase, the department would be better able to cover the rising expenses to the program.





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MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3/15/2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Third Party Independent Reviewer for HVAC and LED Work		
Executive Summary: The District is required by law to have a Third Party Independent Reviewer to review the scope of work between Marble Falls ISD and E3/TASB on the HVAC and LED work that will be taking place from the 2018 Bond Construction projects. The scope of work for the Third Party Independent Reviewer will include items such as: • Survey site with Design/Build firm as directed by Owner • Review schematic designs as they are produced • Review Design-Builder approved equipment submittals as provided to Owner • Inspections as directed by Owner • Sample functional testing of equipment/systems as directed by Owner • Review payment applications as directed by Owner • Review As-Built drawings as they are produced • Final inspection, with Final Inspection Report as requested by Owner • Review Warranty Manual as directed by Owner Administration his recommending Bruce Jackson and Associates as the most qualified provider of these services.		
Fiscal Impact: Cost: ☐ Recurring ☒ One-Time ☐ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☒ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☒ Yes ☐ No
Administration's Recommendation: First Read Only		
Submitted By: Dr. Jeff Gasaway		
Board Approval Required: ☐ Yes ☒ No		



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Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3/15/2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: HVAC and LED Project Contract		
Executive Summary: The contract with E3/TASB to begin HVAC work with Marble Falls ISD is being introduced which will include the cost estimates of the work to be done. In order for work to begin at Marble Falls High School and Highland Lakes Elementary School, the Board will see a contract now and a new contract later this spring that will cover all other campuses.		
Fiscal Impact: Cost: ☐ Recurring ☒ One-Time ☐ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☒ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☒ Yes ☐ No
Administration's Recommendation: First Read Only		
Submitted By: Dr. Jeff Gasaway		
Board Approval Required: ☐ Yes ☒ No		



AIA[®] Document A141[™] – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the _____ day of _____ in the year _____

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

BETWEEN the Owner:

(Name, legal status, address and other information)

Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654
Phone: 830-693-4357
Fax: 830-693-5685

and the Design-Builder:

(Name, legal status, address and other information)

for the following Project:

(Name, location and detailed description)

2018 Bond HVAC and LED Project

The Owner and Design-Builder 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.

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

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	PREVAILING WAGE SCHEDULE

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

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

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

§ 1.1.1 The Owner's program for the Project:

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

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

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

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

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

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

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

- .1 Design phase milestone dates:
- .2 Submission of Design-Builder Proposal:
- .3 Phased completion dates:
- .4 Substantial Completion date:
- .5 Other milestone dates:

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

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

.1 Architect

.2 Consultants

.3 Contractors

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

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

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

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

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

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

§ 1.2 Project Team

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

(List name, address and other information.)

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

(List name, address and other information.)

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

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

[OWNER'S A/E REPRESENTATIVE PURSUANT TO TEXAS GOVERNMENT CODE §§2269.305]

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

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

§ 1.3 Binding Dispute Resolution

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

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

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

§ 1.4 Definitions

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

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

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

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

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

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

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

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

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

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

Individual or Position

Rate

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

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

- .1 Transportation and authorized out-of-town travel and subsistence, if approved in writing, in advance, by the Owner;
- .2 Paragraph Deleted;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions;
- .5 Postage;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Paragraph Deleted; and
- .8 Paragraph Deleted; and
- .9 Paragraph Deleted.

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

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

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.

(Paragraphs deleted)

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

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

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

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

§ 3.1 General

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

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

§ 3.1.3 The Design-Builder hereby covenants and agrees that it shall perform the Work in a good and workmanlike manner and in accordance with the Contract Documents. Unless otherwise provided in the Design-Build Documents, Design-Builder shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work Services. The intent of the Design-Build Documents is to include all items necessary for the proper execution and completion of the Work Services including, without limitation, all items and services that are consistent with, contemplated by, or reasonably inferable from the Design-Build Documents, whether or not such items and services are specifically mentioned therein. The Design-Build Documents are complementary, and what is required by one shall be binding as if required by all.

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

§ 3.1.3.2 The Design-Builder shall notify the Owner in writing if the Design-Builder or Architect believes that that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation. Failure of the Design-Builder and/or its Architect to notify the Owner in such circumstances shall result in the Design-Builder being responsible to the Owner for costs and damages resulting from a violation of the applicable law statute, ordinance, building code, rule or regulation. Neither the Design-Builder nor the architect shall be obligated to perform any act which either believes will violate any applicable law.

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

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

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

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

§ 3.1.8 Progress Reports

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

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

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

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

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of the Contract, shall prepare and submit for the Owner's information an initial construction schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed time limits set forth in the Design-Build 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.

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

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.9.3 The construction schedule shall be in a detailed precedence - style critical path method ("CPM") format satisfactory to the Owner that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Exhibit A, Design-Build Agreement. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and resubmitted for acceptance. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no

event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

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

§ 3.1.11 Design-Builder's Submittals

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

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

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

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

§ 3.1.11.5 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ 3.1.11.6 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty

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

§ 3.1.12.2 The warranty provided in Paragraph 3.1.12.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Design-Build Documents.

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

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

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

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

§ 3.1.13 Royalties, Patents and Copyrights (Paragraphs deleted)

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

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AND AGENTS AND**

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EMPLOYEES OF ANY OF THEM FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILFUL OR NEGLIGENT ACT OR OMISSION OF THE DESIGN-BUILDER, THE ARCHITECT, ANY CONTRACTOR OR SUBCONTRACTOR OF DESIGN-BUILDER, 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 OR OWNER'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER.

§ 3.1.14.2 DESIGN-BUILDER SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO DESIGN-BUILDER'S OBLIGATIONS UNDER PARAGRAPH 3.1.14.1, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH DESIGN-BUILDER AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS PARAGRAPH AS TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY DESIGN-BUILDER TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER IS A SOLE OR CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND DESIGN-BUILDER ARE BOTH PARTIES.

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

§ 3.1.15 Contingent Assignment of Agreements

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and

- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

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

§ 3.1.17 REPRESENTATIONS AND WARRANTIES

§ 3.1.17.1 The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Design-Build Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:

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

§ 3.1.18 BUSINESS STANDARDS

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

§ 3.1.19.1 Pursuant to 19 Texas Administrative Code § 61.1036, the Design-Builder shall sign and seal the Construction Documents and certify on the Certification of Project Completion form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used the best professional judgment and reasonable care consistent with the practice of engineering in the State of Texas in executing the construction documents and that these documents conform with the provisions of 19 TAC § 61.1036.
- .2 It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.
- .3 It has designed the facility according to the provisions of 19 TAC § 61.1036 based on the long-range school facility plan and/or education specifications, building code specifications, and all documented changes to the Construction Documents provided by the District.

- 4 As a condition to the Project being considered Substantially Complete, the Design-Builder shall certify on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.1.19.1.3 above.

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

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

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

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

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)
 - .1 HVAC scope (including control systems) and cost by site;
 - .2 LED scope and cost by site

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

§ 4.3 Preliminary Design

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

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

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

§ 4.3.2 The design services shall include normal structural, mechanical, electrical and civil engineering services. Design-Builder shall be responsible for compliance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code Chapter 1001. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Owner, or the work installed by other contractors, is not guaranteed by the Owner. The Design-Builder shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Design-Builder's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Design-Builder without any additional cost to the Owner.

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

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

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

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

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Schematic Design Documents. Upon the execution of the Design-Build agreement, the Design-Builder shall provide for Owner's approval Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Design-Builder's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

§ 5.1.3 Upon submission of the design and Construction Documents Design-Builder shall be deemed to have satisfied itself as to, and to adopt and accept responsibility for, the design contained in and reflected by the Specifications and

the Drawings. In particular, but without prejudice to the generality of the foregoing, the Design-Builder hereby warrants:

(Paragraph deleted)

- .1 That the said design is in all respects adequate, accurate, sufficient and fit for its purpose; and
- .2 That there are no ambiguities, inaccuracies or inconsistencies within or between the documents forming the Design-Build Contract; and
- .3 The Design-Builder shall work with the aforementioned design so as to procure a complete detailed design of the Work and of each and every part thereof such that the Work and each and every part thereof will jointly and severally be in all respects fit for its or their purpose and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

§ 5.1.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ 5.2 Construction

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

§ 5.2.2 [Paragraph Deleted.]

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

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

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

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

§ 5.3 Labor and Materials

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

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

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

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

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

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

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

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

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

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

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

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

§ 5.4 Taxes

The Design-Builder will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) the Owner is exempt, and (2) the Owner has provided the Design-Builder with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

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

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

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.5.5 Notwithstanding the delivery of a survey or other documents by the Owner, Design-Builder 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. Design-Builder shall be responsible for, and shall repair at Design-Builder's own expense, any damage done to lines, cables, pipes, and pipelines identified to Design-Builder.

§ 5.5.6 The Design-Builder shall also obtain all permits and approvals associated with the Project, job sites and CHPS certification, including payment of 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. Design-Builder's obligations under this paragraph 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 Design-Builder during the construction process which requires the issuance of a permit shall be at Design-Builder's sole cost.

§ 5.6 Allowances

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

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

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

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

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

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

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

§ 5.8 Documents and Submittals at the Site

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

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

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

(Paragraphs deleted)

The Design-Builder shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent to or near to the Project site. Design-Builder and all Subcontractors shall use only such entrances to the Site as are designated by the Owner. During occupied hours, Design-Builder shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

§ 5.10 Cutting and Patching

§ 5.10.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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

§ 5.10.3 Any part of the finished Work damaged during installation or prior to substantial completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall, not less than two (2) times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder'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. Design-Builder shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

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

§ 5.11.3 The Design-Builder shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site. The Owner shall notify the Design-Builder promptly after execution of any separate contract. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

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

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

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

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

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

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

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

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

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

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

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

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

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder

(Paragraphs deleted)

which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times and is issued on or after the Effective Date of the Design-Build Contract.

§ 6.2.2 Acceptance of a Change Order by the Design-Builder 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 Change Order.

§ 6.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section 6.3.3. The Design-Builder shall not be entitled to include overhead and profit in any Change Order, except to the extent the Change Order results from an Owner-requested change in scope.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

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

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

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

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

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

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

involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 [Paragraph Deleted.]

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner.

§ 7.2 Information and Services Required of the Owner

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

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

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

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

§ 7.2.5 [Paragraph Deleted.]

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

§ 7.2.7 Pursuant to the requirements of Texas Business and Commerce Code Section 35.521(n)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

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

§ 7.2.9 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner, at the Owner's expense.

§ 7.2.10 **Paragraph Deleted.**

§ 7.3 Submittals

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

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

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

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

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

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

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct non-conforming or defective Work as required by Section 11.2 or fails to complete the Work as required by Article 3 or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Design-Builder to stop the Work or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under paragraph 11.2.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 The Owner, except as provided for in this Section 8.2.1, shall not be liable to the Design-Builder for delay to the Design-Builder's Work by the act, neglect or default of the Owner, 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 delay the Design-Builder in the Work, Design-Builder shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Design-Builder any compensation for such Owner-caused delays.

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

§ 8.2.3 This Agreement does not permit the recovery of damages by the Contractor for delay, disruption or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment. All costs of overtime work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Design-Build Documents, shall be and are included in the Contract Sum.

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least thirty (30) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Order or Change Directives.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. **DESIGN-BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DESIGN-BUILDER OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO THE DESIGN-BUILDER.**

§ 9.3.4 In each Request for Payment, Design-Builder shall certify that there are no known mechanics' or materialmen's liens outstanding at the date of the Request for Payment, 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 materialmen's liens on the Work, and that releases from all subcontractors 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 Design-Builder.

§ 9.3.5 The Design-Builder shall, within ten (10) days following receipt of payment from the Owner, pay the Architect, other design professionals and all 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. Design-Builder's failure to make payments within such time shall constitute a material breach of this contract. Design-Builder shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the Design-Builder hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Design-Builder has failed to make payment promptly to the Design-Builder's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Design-Builder, the Owner shall be entitled to withhold payment to the Design-Builder in part or in whole to the extent necessary to protect the Owner.

§ 9.3.6 **Waiver of Lien.** It is 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.

§ 9.4 Certificates for Payment

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents;
- .8 delay beyond the times set forth elsewhere in the Design-Build 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 Design-Builder to perform any other obligations of the Contract.

§ 9.5.2 When the above 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 subparagraph 9.5.1.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, but shall have no obligation to, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

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

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

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

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

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 The Design-Builder shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253 as set out in Exhibit B.

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to Design-Builder any or all liquidated damages due Owner.

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

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

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

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

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Retainage is not due to the Design-Builder until thirty-one (31) days after final completion of the Work as set out in Paragraph 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.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and

insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Design-Builder is ready for a final inspection it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Design-Build Documents and the Design-Build Contract has been fully performed, the Owner will promptly approve a final Certificate for Payment certifying that the Project is complete and the Design-Builder is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except as otherwise agreed in writing, Owner will perform no more than three (3) inspections per building to determine whether the Work has attained Final Completion in accordance with the Design-Build Documents. If the Owner is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Design-Builder shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Design-Builder's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 The
(Paragraphs deleted)

Owner shall make final payment of all sums due the Design-Builder not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment.

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

§ 9.11 AUDIT

Design-Builder agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Design-Builder agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Design-Builder and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 ALLOCATION OF OWNER'S ADDITIONAL COSTS

In addition to any liquidated damages payable to the Owner by the Design-Builder, if: (1) the Owner is required to make more than two (2) inspections for Substantial Completion; (2) the Owner is required to make more than two (2) inspections for Final Completion; or (3) the Work is not substantially complete within sixty (60) 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 any Consulting Architect or other Consultant hired by the Owner for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1.1 Safety Precautions and Programs

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

Design-Builder shall develop a safety program applicable to each job site and to the Work to be done, review such program with Owner in advance of beginning the Work, and enforce such program at all times. Further, Design-Builder shall comply with all applicable laws and regulations including but not limited to, the standards and regulations promulgated by the Secretary of labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Design-Builder employees. Owner shall have the right, but not the obligation, to inspect Design-Builder's complete responsibility for protecting the safety and health of its employees and subcontractor.

§ 10.1.2 The Design-Builder shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Design-Builder'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 Design-Builder does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this paragraph are not intended to impose upon the Design-Builder any additional obligations that the Design-Builder 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.

§ 10.1.3 Design-Builder's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, 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. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 10.1.4 Design-Builder has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

§ 10.1.5 Design-Builder 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 Design-Builder to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's employees may only be considered for return to work after the Design-Builder certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract.

Design-Builder will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 10.1.6 Design-Builder will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Education and Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). 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 Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

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

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

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

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

§ 10.2.5 THE DESIGN-BUILDER SHALL PROMPTLY REMEDY DAMAGE AND LOSS (OTHER THAN DAMAGE OR LOSS INSURED UNDER PROPERTY INSURANCE REQUIRED BY THE DESIGN-BUILD DOCUMENTS) AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO PROPERTY REFERRED TO IN SECTIONS 10.2.1.2 AND 10.2.1.3, CAUSED IN WHOLE OR IN PART BY THE DESIGN-BUILDER, THE ARCHITECT, A CONTRACTOR, A SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED OR CONTRACTED BY ANY OF THEM, OR BY ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE AND FOR WHICH THE DESIGN-BUILDER IS RESPONSIBLE UNDER SECTIONS 10.2.1.2 AND 10.2.1.3, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF DESIGN-BUILDER AND OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Design-Builder 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, Subchapter C, Section 756.021, et seq.

§ 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Subparagraph 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Subparagraph shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site.

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

§ 10.3.6 The Design-Builder 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 Design-Builder shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. In such event, Design-Builder shall be entitled to reimbursement of the actual costs of the goods and services necessary to prevent threatened damage, injury or loss, provided such compensation does not exceed the Contract Sum established herein.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

- .1 If a portion of the Work has been covered and the Owner has specifically requested to see such Work, or if any known deficiencies exist, or the Design-Build Documents specifically request inspection prior to its being covered, the Owner may request to see that Work and it shall be uncovered by the Design-Builder. If the work is not in accordance with the Design-Build Documents, it must be corrected and covered at the expense of the Design-Builder. If the Work is according to the Design-Build Documents, the cost to restore cover on the Work is at the sole expense of the Design-Builder.
- .2 Where deficiencies are observed and noted, in addition to listing in the Site Visit Reports, the Owner may, at his/her own discretion, institute a "Notice to Comply" form (NTC) citing the deficiency. Only one item per notice will be listed in order to enable each individual deficiency to be tracked until corrected.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

§ 11.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2 for portions of Work recurring correction.

§ 11.2.2.4 Owner and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building shall have its own, separate, and independent date of Substantial

Completion or Final Completion. Design-Builder shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each building which is substantially complete will expire, and dates of Final Completion for each building. Design-Builder 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 which has been substantially completed. Prior to termination of the one (1) year warranty period, Design-Builder shall accompany the Owner on re-inspection 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 re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Design-Builder of deficiencies and Design-Builder shall start remedying these defects within three (3) days of initial notification from Owner. Design-Builder 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 Design-Builder fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Design-Builder's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 11.2.2.5 The Design-Builder shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of paragraphs 3.1.12 and 11.2.2 for all Work under the Design-Build Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

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

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, and furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

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

§ 11.2.6 The provisions of this Paragraph 11.2 apply to Work done by subcontractors of the Design-Builder as well as work done directly by employees of the Design-Builder.

§ 11.2.7 Design-Builder's express obligation 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.

§ 11.3 Acceptance of Nonconforming Work

If, however, Owner and Design-Builder deem it inexpedient to require the correction of work damaged or not done in accordance with the Design-Build Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Design-Builder and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Design-Builder. 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.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. Upon execution of this Agreement, the Design-Builder grants to the Owner a nonexclusive license to reproduce the Instruments of Service for purposes of constructing, using, and maintaining the Project, and shall obtain similar, nonexclusive licenses from the Design-Builder's consultants.

- .1 The payment of fees to the Design-Builder for professional services performed under this Agreement shall constitute full payment for a one-time, perpetual license fee for those uses of the Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.
- .2 The Owner shall have the right to use the Instruments of Service and to make derivative Works thereof for the purpose of completing the Project in the event Design-Builder is terminated for cause pursuant to this Agreement, without regard to whether such termination shall subsequently be adjudicated to have been wrongful. In the event the Owner shall make derivative works of the Instruments of Service pursuant to this Paragraph, the Design-Builder shall bear no liability for errors or omissions appearing in such derivative works.

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

§ 12.3 [Paragraph Deleted.]

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 12.1.

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

§ 13.2.1 Termination by the Design-Builder

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.
- .4 [Subsection Deleted.]

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

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

§ 13.2.2 Termination by the Owner For Cause

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

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

- .6 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 Design-Builder, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Design-Builder will either (i) perform the Work of such Subcontractor with the Design-Builder'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.

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

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

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 Design-Builder for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Design-Builder'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 Design-Build Documents.

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

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

§ 13.2.3 Suspension by the Owner for Convenience

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

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

§ 13.2.4.3 In the case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, for profits only on that portion of the Work executed, and for reasonable costs of demobilization.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law.

§ 14.1.3 Notice of Claims

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

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

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

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

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.6.3 The Design-Builder shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Design-Builder 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 Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 14.1.7 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.

Init.

(Paragraphs deleted)

- .4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 14.1.8 SUBCONTRACTOR PASS-THROUGH CLAIMS.

In the event that any Subcontractor of the Design-Builder asserts a claim to the Design-Builder that the Design-Builder seeks to pass through to the Owner under the Design-Build Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to the following:

- .1 the requirements of Sections 14.1.1 through 14.1.7 above; and
- .2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Design-Builder to seek and assert such claim against the Owner:
 - (i) The Design-Builder shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Design-Builder shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Design-Builder has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Design-Build Documents for any markup). The liability or responsibilities shall be identified in writing by the Design-Builder to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Design-Builder in the claim submittal materials.
 - (ii) The Design-Builder shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Design-Builder shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Design-Builder has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.
 - (iii) The subcontractor making the claim to the Design-Builder shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Design-Builder in the claim submittal materials.

Assertion of a claim by Design-Builder for pass-through of a subcontractor claim shall only be permitted to the extent payment of the claim does not result in an increase in the Contract Sum established herein.

§ 14.1.9 Any failure of the Design-Builder to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

§ 14.1.10 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Design-Build Documents or law.

§ 14.2 Initial Decision

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

§ 14.2.2 Procedure

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

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial

decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

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

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

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

§ 14.2.6 Upon receipt by the Design-Builder of Owner's initial decision, if Design-Builder elects not to accept such initial decision as rendered and makes a formal objection, the Design-Builder and Owner 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 Section 14.3.

§ 14.2.6.1 [Paragraph Deleted.]

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

§ 14.2.8 Waiver of Lien. It is 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.

§ 14.3 Mediation

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

§ 14.3.2 The 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.

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

§ 14.3.4 In the event the Owner and the Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred and the parties may proceed to litigate the dispute.

§ 14.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, Design-Builder may not bring a legal action against the Owner unless the Design-Builder 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 Design-Builder's Claim, dispute or other matter.

§ 14.4 Arbitration [Not Applicable – Section Deleted.]

§ 14.4.4 Consolidation or Joinder [Not Applicable – Section Deleted.]

(Paragraphs deleted)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1.1 Governing Law

The Contract 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 in the County in which the Project is located. No provision of this Agreement is consent to suit.

(Paragraphs deleted)

§ 15.1.2 This Agreement is made under the authority of Subchapter I of Chapter 271 of the Texas Local Government Code. Any party hereto that prevails in the adjudication of any claim arising under this Agreement shall be entitled to recover its reasonable and necessary attorney's fees under Section 271.159 of the Texas Local Government Code. Except as provided in this Subparagraph 15.1.2, no provision of this Agreement shall waive any immunity or defense.

§ 15.2 Successors and Assigns

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

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

§ 15.2.3 If the Owner requests the Design-Build, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10 and 3.1.19.1, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Build, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Build, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Build, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. The Owner will contract for, independently of the Design-Build, the inspection services, the testing of construction materials, and the verification testing services necessary for the acceptance of the Work by the Owner. The Design-Build shall give the Owner timely notice of when and where tests and inspections are to be made so that

the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

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

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

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

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

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

§ 15.6 Confidential Information

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

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law, including a request pursuant to the Texas Public Information Act, Government Code Chapter 552, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.6.2 Notwithstanding any provision of this Agreement to the contrary, nothing herein may be construed as a limitation on the Owner's obligations under the Texas Public Information Act, Texas Government Code Chapter 552, and no disclosure of materials as required by the Act shall constitute a breach of this Agreement. In the event District receives a request for materials identified by Design-Builder as confidential, copyrighted, trade secret, or proprietary, or which give advantage to a competitor, District shall promptly notify the Design-Builder of the request and shall permit the Design-Builder to submit to the Texas Attorney General reasons why materials should not be released pursuant to the Texas Government Code §552.305. The Owner shall not be required to submit such reasons why the materials should not be released, or to incur any expense in resisting the release of the materials.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings. Technical terms not specifically defined in the Design-Build Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms", July 1982 edition.

§ 15.9 Relationship of Parties

It is understood and agreed that the relationship of Design-Builder to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Design-Builder the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Design-Builder. 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 Design-Builder's independent contractor status as described herein.

§ 15.10 Pursuant to Texas Government Code Chapter 2270, the Design-Builder represents and warrants to the Owner that the Design-Builder does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 15.11 The Design-Builder represents and warrants that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Design-Builder has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 15.12 By signing this Agreement, the undersigned Design-Builder certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Design-Builder certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

§ 15.13 CRIMINAL HISTORY RECORDS CHECKS

§ 15.13.1 For purposes of this Section 3.4.5 (and all subsections) the following definitions shall be applicable:

- .1** "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
- .2** "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.
- .3** "Disqualifying Criminal History" means: a conviction within the last 30 years, related to one or more 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: (1) a felony offense under Texas Penal Code Title 5 Offenses Against Persons (homicide; kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, sexual offenses; and assault offenses); (2) an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or (3) an equivalent offense under federal law or the laws of another state. Contractor shall assume all expenses associated with obtaining criminal history record information, providing the certification, and performing Contractor's responsibilities as set out herein.
- .4** "Opportunity For Direct Contact With Students" is contact that results from activities that provide a substantial opportunity for verbal or physical interaction with students, and that is not supervised by a certified educator or other professional district employee. An employee is not considered to have an Opportunity For Direct Contact With Students if: (1) the employee's work does not involve the construction alteration or repair of an Instructional Facility; (2) the employee's work involves construction of a new Instructional Facility and the person's duties related to the contacted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3) if the employee's work involves an existing Instructional Facility and:
 - a.** the project site area contains sanitary facilities and is separated from all areas used by students, by a secure barrier fence that is not less than six feet in height; and
 - b.** the Contractor has adopted a written policy applicable to its employees, as well as employees of its subcontractors (of any tier) and its independent contractors and consultants, which prohibits these parties from interacting with students or entering areas used by students, informs these parties of the policy, and enforces the policy on the Project site and at any other areas where the Work of this Contract will be conducted.

- c. the Contractor has sought and received written approval by the District of the adopted policy (including its enforcement provisions) and Contractor's means of informing the relevant parties of the existence of the policy.
 - d. Contractor certifies that, if it has taken the above precautions or imposed conditions to ensure that the Contractor's employees and employees of any of its subcontractors, independent contractors, or consultants, will not become Covered Employees, then Contractor will make reasonable efforts to ensure that these precautions or conditions continue throughout the time the contracted services are provided.
- .5 "Instructional Facility" is defined as real property or improvements to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Texas Education Code § 28.002; Texas Education Code § 22.08341(a)(2); and Texas Education Code § 46.01.

§ 15.13.2 Pursuant to Texas Education Code §22.08341, Contractor shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Contractor's Covered Employees. To the extent, Contractor does not have a direct contractual connection with a lower-tier subcontractor, Contractor shall require its subcontractor, independent contractors, and consultants, by the terms of their respective contract with Contractor, to obtain the required criminal history record information through the FACT Clearinghouse, for their Covered Employees, and that such subcontractors, independent contractors, and consultants of Contractors subcontractors, require their subcontractors, independent contractors, and consultants of every tier, to timely make the same certifications to the Contractor as those required by the Owner from the Contractor herein, in order to allow Contractor to timely provide the certifications to the Owner required by the following paragraph, pursuant to Texas Education Code §22.08341. If Contractor is required by this subsection to obtain criminal history record information through the FACT Clearinghouse, then Contractor will subscribe the FACT Clearinghouse for purposes of receiving updates to the criminal history record information it obtained and shall require the same of its lower-tier subcontractors, independent contractors and consultants, by contract.

§ 15.13.3 If Covered Employees will be working on the Project, before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor that the criminal history review requirements for all Covered Employees working on the Owner's Project have been satisfied, and specifically that Contractor:

- .1 has obtained the required criminal history record information through the FACT Clearinghouse for its Covered Employees;
- .2 has obtained written certification from its subcontractors independent contractors, and consultants (of any tier) that they have obtained the required criminal histories documentation through the FACT Clearinghouse for the subcontractor's, independent contractors', and consultants' Covered Employees; that the criminal history review requirements for all Covered Employees working on the Owner's Project have been satisfied; that either none of their respective Covered Employees had a Disqualifying Criminal History, or if a Covered Employee had a Disqualifying Criminal History they have been excluded from assignment to the Project; and that if the subcontractor, independent contractor, or consultant receives information during the performance of this Contract that one of its Covered Employees associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Contractor in writing within three (3) business days;
- .3 will not assign or permit Covered Employees (of either Contractor or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on Owner's project or on Owner's property where the Work of this Contract will be conducted;
- .4 if Contractor receives information during the performance of this Contract that a Covered Employee associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Owner in writing within three (3) business days; and
- .5 if any employee associated with the work under this Contract is not a Covered Employee will make a reasonable effort to ensure that the reasons the employee is determined not to be a Covered Employee will continue to exist throughout the time the contracted services are provided.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

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

.6 Other:

Exhibit C: Owner's Prevailing Wage Schedule

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

MARBLE FALLS INDEPENDENT SCHOOL DISTRICT

OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)

Additions and Deletions Report for AIA® Document A141™ – 2014

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 12:15:18 ET on 11/30/2018.

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year _____

...

(Name, legal status, address and other information)

Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654
Phone: 830-693-4357
Fax: 830-693-5685

...

2018 Bond HVAC and LED Project

PAGE 2

C SUSTAINABLE PROJECTSPREVAILING WAGE SCHEDULE

PAGE 4

OWNER'S A/E REPRESENTATIVE PURSUANT TO TEXAS GOVERNMENT CODE §§2269.305

PAGE 5

☒ Litigation in a court of competent jurisdiction

...

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

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

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

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

...

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

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

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- .1 Transportation and authorized out-of-town travel and ~~subsistence; subsistence, if approved in writing, in advance, by the Owner;~~
- .2 ~~Dedicated data and communication services, teleconferences, Project web sites, and extranets;~~Paragraph Deleted;

...

- .4 Printing, ~~reproductions, plots, standard form documents;~~reproductions;
- .5 ~~Postage, handling and delivery;~~Postage;

...

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;Paragraph Deleted; and
- .8 All taxes levied on professional services and on reimbursable expenses; andParagraph Deleted; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.Paragraph Deleted.

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

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid (—)thirty (30) 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 Design-Builder, in accordance with the Texas Prompt Pay Act, Texas Government Code Chapter 2251.~~

(Insert rate of monthly or annual interest agreed upon.)

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of ~~two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.~~ four (4) years following substantial completion of the Project.

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

...

§ 3.1.3.2 ~~Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines The Design-Builder shall notify the Owner in writing if the Design-Builder or Architect believes that that implementation of any instruction received from the Owner, including those in the Owner's Criteria, Owner would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6. law, statute, ordinance, building code, rule or regulation. Failure of the Design-Builder and/or its Architect to notify the Owner in such circumstances shall result in the Design-Builder being responsible to the Owner for costs and damages resulting from a violation of the applicable law statute, ordinance, building code, rule or regulation. Neither the Design-Builder nor the architect shall be obligated to perform any act which either believes will violate any applicable law.~~

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

§ 3.1.9.2 ~~The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to an initial construction schedule for the Work utilizing critical path method scheduling techniques. The initial schedule shall not exceed time limits set forth in the Design-Build 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.~~

- .1** Each schedule shall break the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Design-Builder and Owner. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Design-Builder to project cash flow for the Project.
- .2** Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Architect is required to review submittals, shop drawings, product data, or samples.

- .3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.
- .4 If any updated schedule exceeds the time limits set forth in the Design-Build Documents for completion of the Work, the Design-Builder shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Design-Builder's planned course of action for completing the Work within the time limits set forth in the Design-Build Documents. If the Design-Builder asserts that the failure of the Owner to provide information to the Design-Builder is the reason for anticipated delay in completion, the Design-Builder shall also specify what information is required from the Owner.

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

.5 Neither the Owner or the Design-Builder shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Design-Builder agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

.6 Submission of any schedule under this Contract constitutes a representation by the Design-Builder that: (1) the schedule represents the sequence in which the Design-Builder intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed work; (3) that to the best of its knowledge and belief the Design-Builder is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Design-Builder intends to complete the remaining work in the sequence and time indicated.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.9.3 The construction schedule shall be in a detailed precedence - style critical path method ("CPM") format satisfactory to the Owner that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Exhibit A, Design-Build Agreement. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and resubmitted for acceptance. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.1.10 Certifications. The Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's

Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

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

§ 3.1.11.6 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty

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

§ 3.1.12.2 The warranty provided in Paragraph 3.1.12.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Design-Build Documents.

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

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

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

§ 3.1.12.6 Manufacturers' Warranties. At Final Acceptance of the Work or interim completion of a particular phase of the Work, Design-Builder shall furnish the Owner two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work

(collectively referred to as "Manufacturers' Warranties"), completed in favor of the Owner. These Manufacturers' Warranties are in addition to and not in lieu of Design-Builder's warranty set forth in Sections 3.1.12 and 11.2.2, and the Owner is entitled to look to Design-Builder for remedy in all cases where Design-Builder's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Owner shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and Design-Builder shall cause six (6) copies of an acknowledged set to be made and furnished to the Owner. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Owner than those terms that are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Owner, or be in a freely assignable form and be assigned to the Owner without limitations.

§ 3.1.13 Royalties, Patents and Copyrights

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

§ 3.1.13 Royalties, Patents and Copyrights

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

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§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. **TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, OWNER'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (1) IS ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND (2) IS CAUSED IN WHOLE OR IN PART BY ANY WILFUL OR NEGLIGENT ACT OR OMISSION OF THE DESIGN-BUILDER, THE ARCHITECT, ANY CONTRACTOR OR SUBCONTRACTOR OF DESIGN-BUILDER, 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 OR OWNER'S CONSULTANTS, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE. HOWEVER, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, OR LIABILITY WHERE THE INJURY, DEATH, OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS, UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY; PROVIDED THAT WHERE THE NEGLIGENCE OF OWNER IS A CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER.**

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts. **DESIGN-BUILDER SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER OR OWNER'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO DESIGN-BUILDER'S OBLIGATIONS UNDER PARAGRAPH 3.1.14.1, IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH DESIGN-BUILDER AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS PARAGRAPH AS TO DESIGN-BUILDER'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN INDEMNITY BY DESIGN-BUILDER TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED, THAT WHERE THE NEGLIGENCE OF OWNER IS A SOLE OR CONCURRING CAUSE, DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND DESIGN-BUILDER TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND DESIGN-BUILDER ARE BOTH PARTIES.**

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

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

§ 3.1.17 REPRESENTATIONS AND WARRANTIES

§ 3.1.17.1 The Design-Builder represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Design-Build Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the final completion of the Work:

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

§ 3.1.18 BUSINESS STANDARDS

§ 3.1.18.1 Design-Builder, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Design-Builder shall review, with Owner, at a reasonable

frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Design-Builder's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

§ 3.1.19.1 Pursuant to 19 Texas Administrative Code § 61.1036, the Design-Builder shall sign and seal the Construction Documents and certify on the Certification of Project Completion form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used the best professional judgment and reasonable care consistent with the practice of engineering in the State of Texas in executing the construction documents and that these documents conform with the provisions of 19 TAC § 61.1036.
- .2 It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.
- .3 It has designed the facility according to the provisions of 19 TAC § 61.1036 based on the long-range school facility plan and/or education specifications, building code specifications, and all documented changes to the Construction Documents provided by the District.
- .4 As a condition to the Project being considered Substantially Complete, the Design-Builder shall certify on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.1.19.1.3 above.

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- .1 HVAC scope (including control systems) and cost by site;
- .2 LED scope and cost by site

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§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification. design services shall include normal structural, mechanical, electrical and civil engineering services. Design-Builder shall be responsible for compliance with the requirements of the Texas Engineering Practice Act, Texas Occupations Code Chapter 1001. The exactness of grades, elevations, dimensions, or locations given on any drawings issued by the Owner, or the work installed by other contractors, is not guaranteed by the Owner. The Design-Builder shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Design-Builder's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Design-Builder without any additional cost to the Owner.

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

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§ 5.1.1 Schematic Design Documents. Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents agreement, the Design-Builder shall provide for Owner's approval Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Design-Builder's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 5.1.2 The Upon the Owner's written approval of the Schematic Design Documents, the Design-Builder shall provide the Construction Documents to the Owner for the Owner's information, review and written approval. If the Owner

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

~~§ 5.2 Construction~~ **§ 5.1.3** Upon submission of the design and Construction Documents Design-Builder shall be deemed to have satisfied itself as to, and to adopt and accept responsibility for, the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, the Design-Builder hereby warrants:

~~§ 5.2.1 Commencement.~~ Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

~~§ 5.2.2~~ If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal. **1** That the said design is in all respects adequate, accurate, sufficient and fit for its purpose; and

2 That there are no ambiguities, inaccuracies or inconsistencies within or between the documents forming the Design-Build Contract; and

3 The Design-Builder shall work with the aforementioned design so as to procure a complete detailed design of the Work and of each and every part thereof such that the Work and each and every part thereof will jointly and severally be in all respects fit for its or their purpose and in particular, but without limiting the generality of the foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

§ 5.1.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ 5.2 Construction

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

~~§ 5.2.2 [Paragraph Deleted.]~~

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

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

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

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

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

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

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

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

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

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

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

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

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect, will not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) the Owner is exempt, and (2) the Owner has provided the Design-Builder with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

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§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than ~~24~~three (3) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or

decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

...

§ 5.5.5 Notwithstanding the delivery of a survey or other documents by the Owner, Design-Builder 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. Design-Builder shall be responsible for, and shall repair at Design-Builder's own expense, any damage done to lines, cables, pipes, and pipelines identified to Design-Builder.

§ 5.5.6 The Design-Builder shall also obtain all permits and approvals associated with the Project, job sites and CHPS certification, including payment of 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. Design-Builder's obligations under this paragraph 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 Design-Builder during the construction process which requires the issuance of a permit shall be at Design-Builder's sole cost.

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The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed. **§ 5.8.1** The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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

...

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. The Design-Builder shall so conduct its operations as not to unreasonably interfere with traffic on public thoroughfares adjacent to or near to the Project site. Design-Builder and all Subcontractors shall use only such entrances to the Site as are designated by the Owner. During occupied hours, Design-Builder shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

§ 5.10 Cutting and Patching

§ 5.10.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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

§ 5.10.3 Any part of the finished Work damaged during installation or prior to substantial completion of the Work shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

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§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the ~~Contract~~. Contract and shall, not less than two (2) times each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder'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. Design-Builder shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

...

§ 5.11.3 The Design-Builder shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

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

...

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

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

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

...

A Change Order is a written instrument signed by the Owner and Design-Builders stating their agreement upon all of the following:

- ~~.1 The change in the Work;~~
- ~~.2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builders compensation; and which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times and is issued on or after the Effective Date of the Design-Build Contract.~~

§ 6.2.2 Acceptance of a Change Order by the Design-Builders 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 Change Order.

~~.3 The extent of the adjustment, if any, in the Contract Time.~~ **§ 6.2.3** Methods used in determining adjustments to the Contract Sum may include those listed in Section 6.3.3. The Design-Builders shall not be entitled to include overhead and profit in any Change Order, except to the extent the Change Order results from an Owner-requested change in scope.

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

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

...

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

...

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

...

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

Commerce Code Section 35.521(n)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

...

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

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B. **Paragraph Deleted.**
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If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, ~~the non-conforming or defective Work as required by Section 11.2 or fails to complete the Work as required by Article 3 or is in default of any of its material obligations hereunder,~~ the Owner may issue a written order to the Design-Builder to stop the Work, 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 ~~any~~ duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, ~~except to the extent required by Section 5.13.1.3.~~ entity. This right shall be in addition to, and not in restriction of, the Owner's right under paragraph 11.2.

...

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ~~ten-day~~ three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

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§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. The Owner, except as provided for in this Section 8.2.1, shall not be liable to the Design-Builder for delay to the Design-Builder's Work by the act, neglect or default of the Owner, 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 delay the Design-Builder in the Work, Design-Builder shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Design-Builder any compensation for such Owner-caused delays.

...

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

or acceleration. Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time.

...

The Contract Sum is stated in the Design-Build Amendment. All costs of overtime work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Design-Build Documents, shall be and are included in the Contract Sum.

...

§ 9.3.1 At least ~~ten~~ thirty (30) days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect ~~retainage if provided for in the Design-Build Documents.~~ retainage.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, ~~or by interim determinations of the Owner, but not yet included in Change Orders.~~ Order or Change Directives.

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§ 9.3.3 The Design-Builder warrants that title to all Work, ~~other than Instruments of Service, Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.~~ **DESIGN-BUILDER SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE DESIGN-BUILDER OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO THE DESIGN-BUILDER.**

§ 9.3.4 In each Request for Payment, Design-Builder shall certify that there are no known mechanics' or materialmen's liens outstanding at the date of the Request for Payment, 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 subcontractors 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 Design-Builder.

§ 9.3.5 The Design-Builder shall, within ten (10) days following receipt of payment from the Owner, pay the Architect, other design professionals and all 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. Design-Builder's failure to make payments within such time shall constitute a material breach of this contract. Design-Builder shall include a provision in each of its subcontracts imposing the same payment obligations on its subcontractors as are applicable to the Design-Builder hereunder, and if the Owner so requests, shall provide copies of such subcontractor payments to the Owner. If the Design-Builder has failed to make payment promptly to the Design-Builder's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Design-Builder, the Owner shall be entitled to withhold payment to the Design-Builder in part or in whole to the extent necessary to protect the Owner.

§ 9.3.6 Waiver of Lien. It is 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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- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents; ~~Documents;~~
- .8 ~~delay beyond the times set forth elsewhere in the Design-Build 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 Design-Builder to perform any other obligations of the Contract.

§ 9.5.2 When the above 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 subparagraph 9.5.1.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, but shall have no obligation to, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

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§ 9.6.7 ~~Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision. The Design-Builder shall, as a condition precedent to any obligation of the Owner under this Agreement, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253 as set out in Exhibit B.~~

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to Design-Builder any or all liquidated damages due Owner.

...

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

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

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

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~~§ 9.10.1 Upon receipt of the Design-Builders written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment. When all of the Work is finally completed and the Design-Builders is ready for a final inspection it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with the Design-Build Documents and the Design-Build Contract has been fully performed, the Owner will promptly approve a final Certificate for Payment certifying that the Project is complete and the Design-Builders is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Except as otherwise agreed in writing, Owner will perform no more than three (3) inspections per building to determine whether the Work has attained Final Completion in accordance with the Design-Build Documents. If the Owner is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Design-Builders shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Design-Builders final payment.~~

~~§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builders submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owners property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Owner, (3) a written statement that the Design-Builders knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builders, refuses to furnish a release or waiver required by the Owner, the Design-Builders may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builders shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.~~

...

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~
~~1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
~~2 — failure of the Work to comply with the requirements of the Design-Build Documents; or~~
~~3 — terms of special warranties required by the Design-Build Documents.~~ Owner shall make final payment of all sums due the Design-Builders not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment.

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§ 9.11 AUDIT

Design-Builders agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Design-Builders agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Design-Builders and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 ALLOCATION OF OWNER'S ADDITIONAL COSTS

In addition to any liquidated damages payable to the Owner by the Design-Builder, if: (1) the Owner is required to make more than two (2) inspections for Substantial Completion; (2) the Owner is required to make more than two (2) inspections for Final Completion; or (3) the Work is not substantially complete within sixty (60) 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 any Consulting Architect or other Consultant hired by the Owner for any additional inspections or services.

§ 10.1 Safety Precautions and Programs

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

Design-Builder shall develop a safety program applicable to each job site and to the Work to be done, review such program with Owner in advance of beginning the Work, and enforce such program at all times. Further, Design-Builder shall comply with all applicable laws and regulations including but not limited to, the standards and regulations promulgated by the Secretary of labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Design-Builder employees. Owner shall have the right, but not the obligation, to inspect Design-Builder's complete responsibility for protecting the safety and health of its employees and subcontractor.

§ 10.1.2 The Design-Builder shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Design-Builder'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 Design-Builder does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this paragraph are not intended to impose upon the Design-Builder any additional obligations that the Design-Builder 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.

§ 10.1.3 Design-Builder's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Design-Builder, 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. Design-Builder, its employees, agents, and subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work.

§ 10.1.4 Design-Builder has adopted or will adopt its own policy to assure a drug and alcohol-free work place while performing the Work.

§ 10.1.5 Design-Builder 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 Design-Builder to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Design-Builder's employees may only be considered for return to work after the Design-Builder certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Design-Builder will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

§ 10.1.6 Design-Builder will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Education and Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). 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.

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

responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Build. The foregoing obligations of the Design-Build are in addition to the Design-Build's obligations under Section 3.1.14. **THE DESIGN-BUILDER SHALL PROMPTLY REMEDY DAMAGE AND LOSS (OTHER THAN DAMAGE OR LOSS INSURED UNDER PROPERTY INSURANCE REQUIRED BY THE DESIGN-BUILD DOCUMENTS) AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO PROPERTY REFERRED TO IN SECTIONS 10.2.1.2 AND 10.2.1.3, CAUSED IN WHOLE OR IN PART BY THE DESIGN-BUILDER, THE ARCHITECT, A CONTRACTOR, A SUBCONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED OR CONTRACTED BY ANY OF THEM, OR BY ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE AND FOR WHICH THE DESIGN-BUILDER IS RESPONSIBLE UNDER SECTIONS 10.2.1.2 AND 10.2.1.3, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF DESIGN-BUILDER AND OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

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§ 10.2.7 The Design-Build shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe ~~condition~~ condition, nor shall Design-Build subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Build suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21-3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Design-Build 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, Subchapter C, Section 756.021, et seq.

...

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Build, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the

affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Subparagraph 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Subparagraph shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

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

...

§ 10.3.6 ~~If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred. The Design-Builder 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 Design-Builder shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.~~

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In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. In such event, Design-Builder shall be entitled to reimbursement of the actual costs of the goods and services necessary to prevent threatened damage, injury or loss, provided such compensation does not exceed the Contract Sum established herein.

...

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

- .1 If a portion of the Work has been covered and the Owner has specifically requested to see such Work, or if any known deficiencies exist, or the Design-Build Documents specifically request inspection prior to its being covered, the Owner may request to see that Work and it shall be uncovered by the Design-Builder. If the work is not in accordance with the Design-Build Documents, it must be corrected and covered at the expense of the Design-Builder. If the Work is according to the Design-Build Documents, the cost to restore cover on the Work is at the sole expense of the Design-Builder.
- .2 Where deficiencies are observed and noted, in addition to listing in the Site Visit Reports, the Owner may, at his/her own discretion, institute a "Notice to Comply" form (NTC) citing the deficiency. Only one item per notice will be listed in order to enable each individual deficiency to be tracked until corrected.

...

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty.~~ If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

...

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

§ 11.2.2.4 Owner and Design-Builder acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building shall have its own, separate, and independent date of Substantial Completion or Final Completion. Design-Builder shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one (1) year warranty on each building which is substantially complete will expire, and dates of Final Completion for each building. Design-Builder 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 which has been substantially completed. Prior to termination of the one (1) year warranty period, Design-Builder shall accompany the Owner on re-inspection 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 re-inspection. For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, Owner will notify the Design-Builder of deficiencies and Design-Builder shall start remedying these defects within three (3) days of initial notification from Owner. Design-Builder 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 Design-Builder fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date, Design-Builder's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

§ 11.2.2.5 The Design-Builder shall issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of paragraphs 3.1.12 and 11.2.2 for all Work under the Design-Build Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

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§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, and furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

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

§ 11.2.6 The provisions of this Paragraph 11.2 apply to Work done by subcontractors of the Design-Builder as well as work done directly by employees of the Design-Builder.

§ 11.2.7 Design-Builder's express obligation 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.

...

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If, however, Owner and Design-Builder deem it inexpedient to require the correction of work damaged or not done in accordance with the Design-Build Documents, an equitable deduction from the Contract Sum and the Stipulated Sum shall be made by agreement between Design-Builder and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Design-Builder. 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.

...

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. Upon execution of this Agreement, the Design-Builder grants to the Owner a nonexclusive license to reproduce the Instruments of Service for purposes of constructing, using, and maintaining the Project, and shall obtain similar, nonexclusive licenses from the Design-Builder's consultants.

- .1 The payment of fees to the Design-Builder for professional services performed under this Agreement shall constitute full payment for a one-time, perpetual license fee for those uses of the Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.
- .2 The Owner shall have the right to use the Instruments of Service and to make derivative Works thereof for the purpose of completing the Project in the event Design-Builder is terminated for cause pursuant to this Agreement, without regard to whether such termination shall subsequently be adjudicated to have been wrongful. In the event the Owner shall make derivative works of the Instruments of Service pursuant to this Paragraph, the Design-Builder shall bear no liability for errors or omissions appearing in such derivative works.

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

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

~~defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.~~Project.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, ~~to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2.~~ The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 12.1.

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

...

- .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 issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents;
or Documents.
- .4** ~~The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.~~[Subsection Deleted.]

...

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

...

- .2** ~~repeatedly~~ refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;

...

- .4** ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
~~or~~
- .5** is otherwise guilty of substantial breach of a provision of the Design-Build Documents;
Documents; or
- .6** 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 Design-Builder, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Design-Builder will either (i) perform the Work of such Subcontractor

with the Design-Builder'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.

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- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

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 Design-Builder for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Design-Builder'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 Design-Build Documents.

...

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

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

...

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

...

~~§ 14.1.7 Claims for Consequential Damages~~**§ 14.1.6.3** The Design-Builder shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site. The Design-Builder 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 Owner not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 14.1.7 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:

- ~~The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes.~~
- 1 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.

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.
.4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

§ 14.1.8 SUBCONTRACTOR PASS-THROUGH CLAIMS.

In the event that any Subcontractor of the Design-Builder asserts a claim to the Design-Builder that the Design-Builder seeks to pass through to the Owner under the Design-Build Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to the following:

- .1 the requirements of Sections 14.1.1 through 14.1.7 above; and
- .2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Design-Builder to seek and assert such claim against the Owner:
 - (i) The Design-Builder shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Design-Builder shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Design-Builder has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Design-Builder's included markup (subject to the limits in the Design-Build Documents for any markup). The liability or responsibilities shall be identified in writing by the Design-Builder to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Design-Builder in the claim submittal materials.
 - (ii) The Design-Builder shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Design-Builder shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Design-Builder has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.
 - (iii) The subcontractor making the claim to the Design-Builder shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Design-Builder in the claim submittal materials.

Assertion of a claim by Design-Builder for pass-through of a subcontractor claim shall only be permitted to the extent payment of the claim does not result in an increase in the Contract Sum established herein.

§ 14.1.9 Any failure of the Design-Builder to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

§ 14.1.10 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Design-Build Documents or law.

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

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

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Upon receipt by the Design-Builder of Owner's initial decision, if Design-Builder elects not to accept such initial decision as rendered and makes a formal objection, the Design-Builder and Owner 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 Section 14.3.

§ 14.2.6.1 [Paragraph Deleted.]

...

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

...

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

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

§ 14.3.4 In the event the Owner and the Design-Builder are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred and the parties may proceed to litigate the dispute.

§ 14.3.5 Unless otherwise agreed in writing by the Owner in the Owner's sole discretion, Design-Builder may not bring a legal action against the Owner unless the Design-Builder 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 Design-Builder's Claim, dispute or other matter.

§ 14.4 Arbitration [Not Applicable – Section Deleted.]

§ 14.4.4 Consolidation or Joinder [Not Applicable – Section Deleted.]

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry

Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 14.4.4 Consolidation or Joinder

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

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1.1 Governing Law

The Contract 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 in the County in which the Project is located. No provision of this Agreement is consent to suit.

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

Section 14.4. § 15.1.2 This Agreement is made under the authority of Subchapter I of Chapter 271 of the Texas Local Government Code. Any party hereto that prevails in the adjudication of any claim arising under this Agreement shall be entitled to recover its reasonable and necessary attorney's fees under Section 271.159 of the Texas Local Government Code. Except as provided in this Subparagraph 15.1.2, no provision of this Agreement shall waive any immunity or defense.

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§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, 3.1.10 and 3.1.19.1, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that

are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

...

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

...

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

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§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by ~~law-law,~~ including a request pursuant to the Texas Public Information Act, Government Code Chapter 552, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.6.2 ~~Notwithstanding any provision of this Agreement to the contrary, nothing herein may be construed as a limitation on the Owner's obligations under the Texas Public Information Act, Texas Government Code Chapter 552, and no disclosure of materials as required by the Act shall constitute a breach of this Agreement. In the event District receives a request for materials identified by Design-Builder as confidential, copyrighted, trade secret, or proprietary, or which give advantage to a competitor, District shall promptly notify the Design-Builder of the request and shall permit the Design-Builder to submit to the Texas Attorney General reasons why materials should not be released pursuant to the Texas Government Code §552.305. The Owner shall not be required to submit such reasons why the materials should not be released, or to incur any expense in resisting the release of the materials.~~

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§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings. Technical terms not specifically defined in the Design-Build Documents shall have the meanings given in AIA Document "Glossary of Construction Industry Terms", July 1982 edition.

§ 15.9 Relationship of Parties

It is understood and agreed that the relationship of Design-Builder to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Design-Builder the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Design-Builder. 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 Design-Builder's independent contractor status as described herein.

§ 15.10 Pursuant to Texas Government Code Chapter 2270, the Design-Builder represents and warrants to the Owner that the Design-Builder does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 15.11 The Design-Builder represents and warrants that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Design-Builder has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

§ 15.12 By signing this Agreement, the undersigned Design-Builder certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Design-Builder certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

§ 15.13 CRIMINAL HISTORY RECORDS CHECKS

§ 15.13.1 For purposes of this Section 3.4.5 (and all subsections) the following definitions shall be applicable:

- .1** "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.
- .2** "Covered Employees", shall mean, all employees of Contractor, as well as employees of Contractor's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.
- .3** "Disqualifying Criminal History" means: a conviction within the last 30 years, related to one or more 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: (1) a felony offense under Texas Penal Code Title 5 Offenses Against Persons (homicide; kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, sexual offenses; and assault offenses); (2) an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or (3) an equivalent offense under federal law or the laws of another state. Contractor shall assume all expenses associated with obtaining criminal history record information, providing the certification, and performing Contractor's responsibilities as set out herein.
- .4** "Opportunity For Direct Contact With Students" is contact that results from activities that provide a substantial opportunity for verbal or physical interaction with students, and that is not supervised by a certified educator or other professional district employee. An employee is not considered to have an Opportunity For Direct Contact With Students if: (1) the employee's work does not involve the construction alteration or repair of an Instructional Facility; (2) the employee's work involves construction of a new Instructional Facility and the person's duties related to the contacted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3) if the employee's work involves an existing Instructional Facility and:
 - a. the project site area contains sanitary facilities and is separated from all areas used by students, by a secure barrier fence that is not less than six feet in height; and
 - b. the Contractor has adopted a written policy applicable to its employees, as well as employees of its subcontractors (of any tier) and its independent contractors and consultants, which prohibits these parties from interacting with students or entering areas used by students, informs these parties of the policy, and enforces the policy on the Project site and at any other areas where the Work of this Contract will be conducted,
 - c. the Contractor has sought and received written approval by the District of the adopted policy (including its enforcement provisions) and Contractor's its means of informing the relevant parties of the existence of the policy.
 - d. Contractor certifies that, if it has taken the above precautions or imposed conditions to ensure that the Contractor's employees and employees of any of its subcontractors, independent contractors, or consultants, will not become Covered Employees, then Contractor will make reasonable efforts to ensure that these precautions or conditions continue throughout the time the contracted services are provided.
- .5** "Instructional Facility" is defined as real property or improvements to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Texas Education Code § 28.002; Texas Education Code § 22.08341(a)(2); and Texas Education Code § 46.01.

§ 15.13.2 Pursuant to Texas Education Code §22.08341, Contractor shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Contractor's Covered Employees. To the extent, Contractor does not have a direct contractual connection with a lower-tier subcontractor, Contractor shall require its subcontractor, independent contractors, and consultants, by the terms of their respective contract with Contractor, to obtain the required criminal history record information through the FACT Clearinghouse, for their Covered Employees, and that such subcontractors, independent contractors, and consultants of Contractors subcontractors, require their subcontractors, independent contractors, and consultants of every tier, to timely make the same certifications to the Contractor as those required by the Owner from the Contractor herein, in order to allow Contractor to timely provide the certifications to the Owner required by the following paragraph, pursuant to Texas Education Code §22.08341. If Contractor is required by this subsection to obtain criminal history record information through the FACT Clearinghouse, then Contractor will subscribe the FACT Clearinghouse for purposes of receiving updates to the criminal history record information it obtained and shall require the same of its lower-tier subcontractors, independent contractors and consultants, by contract.

§ 15.13.3 If Covered Employees will be working on the Project, before beginning any Work on the Project, Contractor will provide written certification to the Owner that Contractor that the criminal history review requirements for all Covered Employees working on the Owner's Project have been satisfied, and specifically that Contractor:

- .1 has obtained the required criminal history record information through the FACT Clearinghouse for its Covered Employees;
- .2 has obtained written certification from its subcontractors independent contractors, and consultants (of any tier) that they have obtained the required criminal histories documentation through the FACT Clearinghouse for the subcontractor's, independent contractors', and consultants' Covered Employees; that the criminal history review requirements for all Covered Employees working on the Owner's Project have been satisfied; that either none of their respective Covered Employees had a Disqualifying Criminal History, or if a Covered Employee had a Disqualifying Criminal History they have been excluded from assignment to the Project; and that if the subcontractor, independent contractor, or consultant receives information during the performance of this Contract that one of its Covered Employees associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Contractor in writing within three (3) business days;
- .3 will not assign or permit Covered Employees (of either Contractor or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on Owner's project or on Owner's property where the Work of this Contract will be conducted;
- .4 if Contractor receives information during the performance of this Contract that a Covered Employee associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Owner in writing within three (3) business days; and
- .5 if any employee associated with the work under this Contract is not a Covered Employee will make a reasonable effort to ensure that the reasons the employee is determined not to be a Covered Employee will continue to exist throughout the time the contracted services are provided.

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- .4 AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completedParagraph Deleted.

...

Exhibit C: Owner's Prevailing Wage Schedule

...

MARBLE FALLS INDEPENDENT SCHOOL DISTRICT



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, 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 12:15:18 ET on 11/30/2018 under Order No. 0505171077 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



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

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141[™]–2014, Standard Form of Agreement Between Owner and Design-Builder dated the _____ day of _____ in the year TWO THOUSAND _____ (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

2018 Bond HVAC and LED Project

THE OWNER:

(Name, legal status and address)

Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654
Phone: 830-693-4357
Fax: 830-693-5685

THE DESIGN-BUILDER:

(Name, legal status and address)

ADDITIONS AND DELETIONS:

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

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

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

The Owner and Design-Builder hereby amend the Agreement as follows.

Init.

TABLE OF ARTICLES

A.1 CONTRACT SUM

A.2 CONTRACT TIME

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

☐ Stipulated Sum, in accordance with Section A.1.2 below

☐ Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

☐ Cost of the Work plus the Design-Builder's Fee and General Conditions with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be _____ AND ____/100 DOLLARS (\$ _____), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee and General Conditions With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

Init.

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User Notes:

(1295332719)

§ A.1.4.2 The Design-Builder's Fee shall be _____ percent (____%) of the actual cost of the Work as defined in Article A.5.

§ A.1.4.2.2 The Design-Builder's compensation for general conditions shall be _____ percent (____%) of the actual Cost of the Work as defined in Article 6. [Notwithstanding any other provision of the contract documents, the work included in general conditions for which the Design-Builder is compensated under this section 5.1.1.2 are described in Schedule "A" attached hereto.]

§ A.1.4.2.3 The actual Cost of the Work does not include the Design-Builder's fee or compensation for general conditions.

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee and General Conditions is guaranteed by the Design-Builder not to exceed _____ AND _____ DOLLARS (\$ _____), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. 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.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)

- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of percent (%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of percent (%) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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Other identifying information:

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

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§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

- .1 Superintendent
- .2 Project Manager
- .3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

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

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2

(Paragraphs deleted)

[Paragraph Deleted.]

(Table deleted)

§ A.5.1.1.3 [Paragraph Deleted.]

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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 Section A.5.1.1.

§ A.5.1.1.5 [Paragraph Deleted.]

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 [Paragraph Deleted.]

§ A.5.1.4.2 [Paragraph Deleted.]

§ A.5.1.4.3 [Paragraph Deleted.]

§ A.5.1.4.4 [Paragraph Deleted.]

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 [Paragraph Deleted.]

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Owner is not exempt under Texas law.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 [Paragraph Deleted.]

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents.

§ A.5.1.5.6 [Paragraph Deleted.]

§ A.5.1.5.7 [Paragraph Deleted.]

§ A.5.1.5.8 [Paragraph Deleted.]

§ A.5.1.5.9 [Paragraph Deleted.]

§ A.5.1.5.10 [Paragraph Deleted.]

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 [Paragraph Deleted.]

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 [Paragraph Deleted.]

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost

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incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder 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 Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder 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 the 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 Design-Builder's records and accounts, including complete documentation supporting accounting

entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

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

MARBLE FALLS INDEPENDENT SCHOOL DISTRICT

OWNER (Signature)

(Printed name and title)

DESIGN-BUILDER (Signature)

(Printed name and title)

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Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit A

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 09:49:37 ET on 11/30/2018.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the _____ day of _____ in the year TWO THOUSAND _____ (the "Agreement")

...

2018 Bond HVAC and LED Project

...

Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654
Phone: 830-693-4357
Fax: 830-693-5685

PAGE 2

[] Cost of the Work plus the Design-Builder's Fee and General Conditions with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

...

§ A.1.2.1 The Stipulated Sum shall be (\$—), AND _____/100 DOLLARS (\$ _____), subject to authorized adjustments as provided in the Design-Build Documents.

...

~~§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price~~

§ A.1.4 Cost of the Work Plus Design-Builder's Fee and General Conditions With a Guaranteed Maximum Price

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.) Fee shall be _____ percent (____ %) of the actual cost of the Work as defined in Article A.5.

§ A.1.4.2.2 The Design-Builder's compensation for general conditions shall be _____ percent (____ %) of the actual Cost of the Work as defined in Article 6. [Notwithstanding any other provision of the contract documents, the work included in general conditions for which the Design-Builder is compensated under this section 5.1.1.2 are described in Schedule "A" attached hereto.]

§ A.1.4.2.3 The actual Cost of the Work does not include the Design-Builder's fee or compensation for general conditions.

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§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee and General Conditions is guaranteed by the Design-Builder not to exceed (\$—), AND DOLLARS (\$—), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

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§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than (—) forty-five (45) days after the Owner receives the Application for Payment.

PAGE 6

- .3 Add the Design-Builder's Fee, less retainage of percent (—%) five percent (5%). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of percent (—%) five percent (5%) from that portion of the Work that the Design-Builder self-performs;

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§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site:

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

[Paragraph Deleted.]

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, 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. [Paragraph Deleted.]

...

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval. [Paragraph Deleted.]

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§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder 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 Design-Builder shall mean fair market value. [Paragraph Deleted.]

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the

purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.[Paragraph Deleted.]

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.[Paragraph Deleted.]

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.[Paragraph Deleted.]

...

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design-Build Documents.[Paragraph Deleted.]

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.Owner is not exempt under Texas law.

...

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.[Paragraph Deleted.]

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.Documents.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.[Paragraph Deleted.]

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.[Paragraph Deleted.]

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.[Paragraph Deleted.]

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.[Paragraph Deleted.]

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.[Paragraph Deleted.]

...

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.[Paragraph Deleted.]

...

~~§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others. [Paragraph Deleted.]~~
PAGE 10

- .5 Except as provided in Section A.5.1.6.3 of this Agreement, ~~costs~~ Costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

...

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the ~~Design-Builder~~ Design-Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

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MARBLE FALLS INDEPENDENT SCHOOL
DISTRICT

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, 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 09:49:37 ET on 11/30/2018 under Order No. 0505171077 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



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

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

2018 Bond HVAC and LED Project

THE OWNER:

(Name, legal status and address)

Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654
Phone: 830-693-4357
Fax: 830-693-5685

THE DESIGN-BUILDER:

(Name, legal status and address)

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.

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the _____ day of _____ in the year TWO THOUSAND AND _____.
(In words, indicate day, month and year.)

TABLE OF ARTICLES

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

ARTICLE B.1 GENERAL

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

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

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

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

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

- .1** Definitions:
 - a) Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.
 - b) Duration of the Project. Includes the time from the beginning of the work on the Project until the Design-Builder's/person's work on the Project has been completed and accepted by the governmental entity.
 - c) Persons providing services on the Project ("subcontractor" in §406.096). Includes all persons or entities performing all or part of the services the Design-Builder has undertaken to perform on the Project, regardless of whether that person contracted directly with the Design-Builder and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .2** The Design-Builder shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Design-Builder providing services on the Project, for the duration of the Project.
- .3** The Design-Builder must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- .4** If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the Project, the Design-Builder must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- .5** The Design-Builder shall obtain from each person providing services on a Project, and provide to the governmental entity:
 - .5.1** a certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - .5.2** no later than seven (7) days after receipt by the Design-Builder, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .6** The Design-Builder shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- .7** The Design-Builder shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Design-Builder knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .8** The Design-Builder shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .9** The Design-Builder shall contractually require each person with whom it contracts to provide services on a Project, to:

- .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- .9.2 provide to the Design-Builder, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- .9.3 provide the Design-Builder, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.4 obtain from each other person with whom it contracts, and provide to the Design-Builder:
 - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- .9.6 notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Design-Builder is representing to the governmental entity that all employees of the Design-Builder who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Design-Builder to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder which entitles the governmental entity to declare the contract void if the Design-Builder does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity. [28 TAC Rule §(a)(7)]

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

Commercial General Liability:

Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)
Personal & Advertising Injury	\$1,000,000.00 each person
Products and Completed Operations	\$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Independent Contractors	(Same limits as above)
Contractual Liability	(Same limits as above)

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

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

Automobile Liability:

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

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

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

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

§ B.2.1.5 Umbrella/Excess Liability Coverage. The Design-Builder shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Design-Builder for an amount of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner, by way of endorsement, shall be named as an additional insured. No aggregate shall be permitted for this type of coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than TWO MILLION DOLLARS per claim and FOUR MILLIONS DOLLARS in the aggregate.

§ B.2.1.6 GENERAL INSURANCE POLICY REQUIREMENTS

(Paragraphs deleted)

§ B.2.1.6.1 Notice of Cancellation to Owner. Prior to commencing any work, Design-Builder shall furnish to Owner at the address shown below Certificates of Insurance and if requested by Owner a copy of the actual policies (or other evidence deemed sufficient by the Owner) for all insurance coverage required by this Article and additional insurance called for elsewhere in the Design-Build Documents, certifying compliance with the minimum required coverage. Design-Builder shall notify the Owner in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for

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cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. In addition, all policies shall be endorsed to provide that in the event of cancellation or reduction of coverage during the policy period, the insurer shall provide the Owner thirty (30) days advance written notice of such cancellation or reduction.

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

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

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

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

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

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

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

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

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

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

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

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

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:

(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

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

§ B.2.2.2 The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total bid as security for payment of all persons performing labor and furnishing materials in connection

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with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

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

§ B.2.2.4 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

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

§ B.2.2.6 All bonds shall be originals. The Design-Builder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

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

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

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

§ B.2.2.10 Notwithstanding any provision to the contrary contained in the bond or the bonded contract, the bond guarantees only the performance of the installation portion of the contract[, and shall not be construed to guarantee the performance of (i) any efficiency or energy savings guarantees, (ii) any support or maintenance service agreement, or (iii) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the contract].

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

(Paragraphs deleted)

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

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

Additions and Deletions Report for AIA® Document A141™ – 2014 Exhibit B

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 12:15:59 ET on 11/30/2018.

PAGE 1

2018 Bond HVAC and LED Project

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Marble Falls Independent School District
1800 Colt Circle
Marble Falls, Texas 78654
Phone: 830-693-4357
Fax: 830-693-5685

...

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

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

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

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

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§ B.2.1.1 Commercial General Liability with policy limits of not less than —(\$—) for each occurrence and —(\$—) in the aggregate providing coverage for claims including Workers' Compensation and Employers Liability Insurance Coverage.

.1 Definitions:

- a) Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.
- b) Duration of the Project. Includes the time from the beginning of the work on the Project until the Design-Builder's/person's work on the Project has been completed and accepted by the

- governmental entity.
- c) Persons providing services on the Project ("subcontractor" in §406.096). Includes all persons or entities performing all or part of the services the Design-Builder has undertaken to perform on the Project, regardless of whether that person contracted directly with the Design-Builder and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .2 The Design-Builder shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Design-Builder providing services on the Project, for the duration of the Project.
- .3 The Design-Builder must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- .4 If the coverage period shown on the Design-Builder's current certificate of coverage ends during the duration of the Project, the Design-Builder must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- .5 The Design-Builder shall obtain from each person providing services on a Project, and provide to the governmental entity:
- .5.1 a certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .5.2 no later than seven (7) days after receipt by the Design-Builder, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .6 The Design-Builder shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person; .7 The Design-Builder shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Design-Builder knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .8 The Design-Builder shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .9 The Design-Builder shall contractually require each person with whom it contracts to provide services on a Project, to:
- .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- .9.2 provide to the Design-Builder, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- .9.3 provide the Design-Builder, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.4 obtain from each other person with whom it contracts, and provide to the Design-Builder:
- ~~.2 personal injury;~~ (a) a certificate of coverage, prior to the other person beginning work on the Project; and
- ~~.3 damages because of injury to or destruction of tangible property;~~ (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the

Project:

- .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- .9.6 notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- .4 bodily injury or property damage arising out of completed operations; and,10 By signing this contract or providing or causing to be provided a certificate of coverage, the Design-Builder is representing to the governmental entity that all employees of the Design-Builder who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the division. Providing false or misleading information may subject the Design-Builder to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.11 The Design-Builder's failure to comply with any of these provisions is a breach of contract by the Design-Builder which entitles the governmental entity to declare the contract void if the Design-Builder does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity. [28 TAC Rule §(a)(7)]

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than (\$) per claim and (\$) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage-. Design-Builder shall provide Commercial General Liability Insurance, including coverage for Personal Injury Liability, Independent Design-Builder's Liability, Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Design-Builder's (or Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties in the following amounts:

Commercial General Liability:

<u>Each Occurrence</u>	<u>\$1,000,000.00</u>
<u>General Aggregate</u>	<u>\$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided)</u>
<u>Personal & Advertising Injury</u>	<u>\$1,000,000.00 each person</u>
<u>Products and Completed Operations</u>	<u>\$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)</u>
<u>Property Damage</u>	<u>\$1,000,000.00 each occurrence</u> <u>\$2,000,000.00 aggregate</u>
<u>Independent Contractors</u>	<u>(Same limits as above)</u>
<u>Contractual Liability</u>	<u>(Same limits as above)</u>

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

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2. **Comprehensive Automobile Liability Insurance (owned, non-owned and hired vehicles).** With coverage as follows:

Automobile Liability:

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

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

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

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

§ B.2.1.5 Employers' Liability with policy limits as provided below:

Umbrella/Excess Liability Coverage. The Design-Builder shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Design-Builder for an amount of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner, by way of endorsement, shall be named as an additional insured. No aggregate shall be permitted for this type of coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

§ B.2.1.6 **Professional Liability** covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than TWO MILLION DOLLARS per claim and FOUR MILLIONS DOLLARS in the aggregate.

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate.

GENERAL INSURANCE POLICY REQUIREMENTS

§ B.2.1.7 ~~Pollution Liability covering performance of the Work, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate.~~

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than —(\$ —) per claim and —(\$ —) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business

days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

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

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

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

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

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

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

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

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

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

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

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

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

(except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Design-Builder shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

- .5 No special payments shall be made for any insurance policies that the Design-Builder and subcontractors are required to carry; all are included in the Contract Sum.

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

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§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made. The Design-Builder is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the total combined accepted bid(s).

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

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

§ B.2.2.4 Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

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

§ B.2.2.6 All bonds shall be originals. The Design-Builder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

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

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

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

§ B.2.2.10 Notwithstanding any provision to the contrary contained in the bond or the bonded contract, the bond guarantees only the performance of the installation portion of the contract[, and shall not be construed to guarantee the performance of (i) any efficiency or energy savings guarantees, (ii) any support or maintenance service agreement, or (iii) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the contract].

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

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 Loss of Use Insurance. At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 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, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, 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 covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance 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 B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds

received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

Exhibit C: Prevailing Wage Schedule for the Project

MARBLE FALLS INDEPENDENT SCHOOL DISTRICT
PREVAILING WAGE SCHEDULE (With Fringes)

Based Upon General Decision Number: TX180155 07/06/2018 TX 155

Superseded General Decision Number: TX20170155

State: Texas

Construction Type: Building

County: Burnet County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a) (2) – (60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/05/2018
1	03/23/2018
2	07/06/2018

ASBE0087-022 01/01/2018

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR	\$22.72	\$10.02

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER.....	\$28.00	\$22.35

IRON0482-013 06/01/2017		
	Rates	Fringes
IRONWORKER, REINFORCING AND STRUCTURAL	\$22.15	\$6.68

LABO0154-001 05/01/2008		
	Rates	Fringes
Laborers: (Mason Tender – Cement/Concrete)	\$12.98	\$3.49

* PLUM0286-007 06/04/2018		
	Rates	Fringes
PLUMBER, Excludes HVAC Pipe Installation	\$29.50	\$12.82

SUTX2009-010 04/20/2009		
	Rates	Fringes
BRICKLAYER	\$19.67	\$0.00
CARPENTER, Includes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation	\$13.13	\$0.00
CEMENT MASON/CONCRETE FINISHER	\$13.27	\$0.00
ELECTRICIAN	\$20.00	\$3.11
GLAZIER	\$17.20	\$1.59
HVAC MECHANIC (HVAC Duct and Pipe Installation)	\$14.21	0.77
INSTALLER – OVERHEAD DOOR	\$11.63	\$6.26

	Rates	Fringes
LABORER: Common or General	\$9.73	\$0.00
LABORER: Landscape & Irrigation	\$8.50	\$0.00
LABORER: Mason Tender – Brick	\$12.02	\$0.00
LABORER: Mortar Mixer	\$12.00	\$0.00
LABORER: Plaster Tender	\$9.00	\$0.00
OPERATOR: Backhoe/Excavator/Trackhoe	\$13.75	\$0.00
OPERATOR: Bulldozer	\$12.80	\$0.43
OPERATOR: Crane	\$21.33	\$0.00
OPERATOR: Forklift	\$14.58	\$0.00
OPERATOR: Loader (Front End)	\$10.54	\$0.00
PAINTER: Brush, Roller and Spray	\$12.26	\$0.00
PLASTERER	\$15.50	\$0.00
ROOFER	\$13.64	\$1. 80
SHEET METAL WORKER, Excludes HVAC Duct Installation	\$17.00	\$0.00
TILE SETTER	\$15.00	\$0.00
TRUCK DRIVER	\$11.24	\$0.35

WELDERS – Receive rate prescribed for craft performing operation to which welding is incidental.



Marble Falls ISD has an unyielding commitment to love every child and inspire them to achieve their fullest potential.

Marble Falls ISD Board of Trustees Agenda Item Information

Meeting Date: 3.5.2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3.5.2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Ranking of offerors for Construction Manager At-Risk Services for the 2018 Bond Projects* (those identified in the procurement package) and delegation of authority to the Superintendent to negotiate a contract with the top-ranked offeror for presentation to the Bo		
Executive Summary: The administration has used a legally guided, inclusive, and thorough process to determine which construction management firm would be the most highly qualified provider of construction management services. This item discusses the process and request approval of the recommended firm as well as authorization to negotiate a contract for proposal to the MFISD Board of Trustees.		
Fiscal Impact: Cost: ☒ Recurring ☐ One-Time ☐ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☒ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Recommended motion language: "I move that the Board of Trustees approve the ranking of offeror and delegate authority to the Superintendent or his designee to negotiate a contract with Satterfield and Pontikes Construction, Inc., the top-ranked offeror, for further consideration and action by the Board of Trustees."		
Submitted By: Chris Allen		
Board Approval Required: ☒ Yes ☐ No		

CONSTRUCTION MANAGER AT RISK (CMAR)

PROCESS

- Worked with our legal counsel to develop a RFQ for CMAR – RFQ was posted on February 22nd
- Assemble a group of informed professionals to review proposals from CMARs that express interest in accomplishing this work. Proposal evaluators include: Chris Allen, Jeff Gasaway, Melissa Lafferty, Michael Phillips, Huckabee reps, Jason Walker, Ryan Nash, Kevin Naumann, and Rick Edwards (March 12th)
- Follow-up interviews scheduled for March 14th
- We recommend continuation of the process with Satterfield and Pontikes Construction, Inc.



Marble Falls ISD has an unyielding commitment to love every child and inspire them to achieve their fullest potential.

Marble Falls ISD Board of Trustees Agenda Item Information

Meeting Date: 3/5/2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3/5/2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Selection of company to replace the turf and resurface the track at Mustang Stadium		
Executive Summary: The District engaged numerous professionals to evaluate four competing proposals to replace the turf and resurface the track at Mustang Stadium. Based on the evaluation of proposals, administration recommends Paragon Sports to replace the turf and resurface the track at Mustang Stadium.		
Fiscal Impact: Cost: ☐ Recurring ☒ One-Time ☐ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☒ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Administration recommends the following Board actions: "I move that the Board of Trustees select the firm of Paragon Sports to accomplish the Mustang Stadium turf and track replacement, and delegate authority to the Superintendent to take all actions pursuant to Texas Government Code §2254.004 and Board Policy CH and CV, including presentation of a proposed contract to the Board for action".		
Submitted By: Chris Allen		
Board Approval Required: ☒ Yes ☐ No		

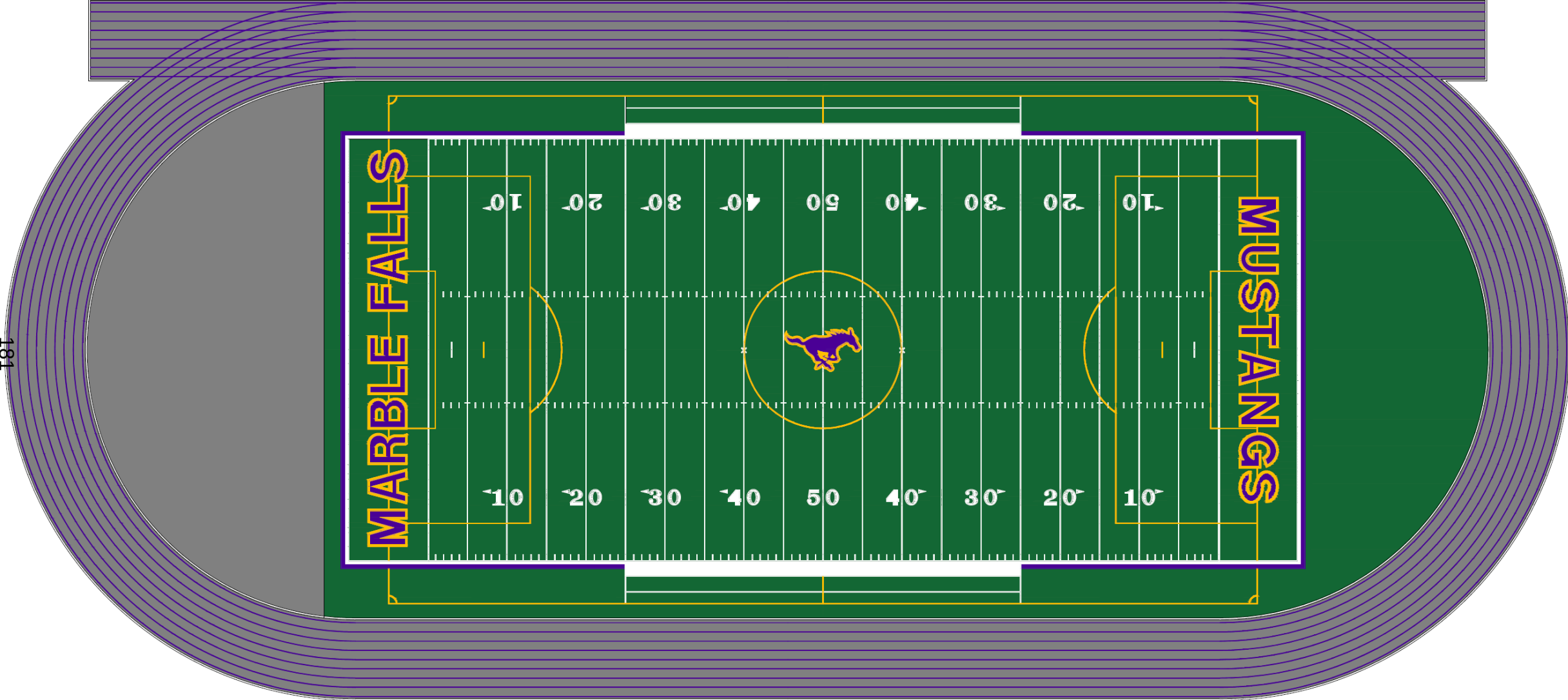
MUSTANG STADIUM TRACK & TURF REPLACEMENT

PROCESS

- Assembled a group of informed professionals to hear presentations from firms that expressed interest in accomplishing this work. Proposal evaluators included: Rick Hoover, Cory Maxwell, Michael Birdwell, John Berkman, Rich Powers, James Schrader, Tony Leflet, Jeff Gasaway, Kevin Virdell, and Chris Allen
- Heard presentations from firms interested in accomplishing this work (all presenters represented companies who are part of BuyBoard)
- Discussed relevant aspects of each presentation and scheduled visits to area schools that had worked with these firms

PROCESS

- Visitation Team: Rick Hoover, Mike Birdwell, Rich Powers, Cord Woerner, Mike Phillips, Chris Allen, Jeff Gasaway, Kevin Virdell, and Coach
- Sites Visits: Dripping Springs, Eanes, Lake Travis, Liberty Hill, Burnet, Hays, Alamo Heights, Faith Academy
- Requested best and final proposals
- Our intent is to use Paragon Sports, a BuyBoard vendor, and bring a contract at the next Board meeting





**LEARNERS TODAY,
LEADERS TOMORROW,
MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: March 14, 2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Staff Development Waiver Request for 2019-2020		
Executive Summary: We are going to be requesting a waiver that will provide up to 2100 minutes (5 days) to be used for professional development during the instructional calendar year. This will include instructional planning days and early release/professional learning days on the approved 2019-2020 instructional calendar. We must have board approval prior to requesting the waiver from the Texas Education Agency.		
Fiscal Impact: Cost: ☐ Recurring ☐ One-Time ☒ No Fiscal Impact	Funding Source: ☒ General Fund ☐ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: This is for information purposes. We will request approval at the next board meeting.		
Submitted By: Wes Cunningham		
Board Approval Required: ☐ Yes ☒ No		

Marble Falls Independent School District

Instructional Calendar

2019-2020

August 19						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

*Marble Falls ISD has an unyielding commitment
to love every child and inspire them to
achieve their fullest potential.*

Elementary Start and End Times: 7:45 AM - 3:15 PM

Middle School Start and End Times: 8:10 AM - 3:45 PM

High School Start and End Times: 8:25 AM - 3:50 PM

September 19						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October 19						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 19						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December 19						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

January 20						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February 20						
Su	M	Tu	W	Th	F	Sa
						1
2	3	4	5	6	7	8
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16	17	18	19	20	21	22
23	24	25	26	27	28	29

March 20						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 20						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

May 20						
Su	M	Tu	W	Th	F	Sa
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24	25	26	27	28	29	30
31						

June 20						
Su	M	Tu	W	Th	F	Sa
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21	22	23	24	25	26	27
28	29	30				

July 20						
Su	M	Tu	W	Th	F	Sa
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19	20	21	22	23	24	25
26	27	28	29	30	31	

State Assessment Dates		
Winter EOC Retest Window	12/9 -12/13	Grade 5 & 8 Math Retest 5/11
Grade 4 & 7 Writing	4/7	Grade 3,4,6,7 Reading 5/12
Grade 5 & 8 Math	4/7	Grade 5 & 8 Reading Retest 5/12
Eng. 1 EOC	4/7	Grade 5 & 8 Science 5/13
Grade 5 & 8 Reading	4/8	Grade 8 Social Studies 5/14
Eng. 2 EOC	4/8	AP Exam Window 5/4 - 5/15
EOC Window	5/4-5/08	STAAR Retest Window 6/22-6/26
Grade 3,4,6,7 Math	5/11	EOC Retest Window 6/22-6/26

New Employee Inservice	
Prior to School In-Service	
August 21 - First day of school	
May 28 - Last day of school	

End of Grading Period	
9 wks; 8 wks (80) / 10 wks; 10wks (93)	
10/18; 12/20; 3/13; 5/28	

Holidays	
Sept. 2: Labor Day	
Oct. 14: Student / Staff Holiday	
Nov. 28 - 29: Thanksgiving	
Dec. 23 - Jan. 3: Christmas Break	
January 20: Martin Luther King Jr.	
Feb. 17:- Student / Staff Holiday	
March 16-20: Spring Break	
April 10: Good Friday	
May 25: Memorial Day	
Special Observance (School in Session)	
Nov. 11: Veterans Day 	

Staff Inservice / Student Holiday	
October 21: Instructional Planning	
January 6: Instructional Planning	
March 23: Instructional Planning	

Student Early Release / Staff Inservice	
December 20: Student Early Release	
May 28: Student Early Release	

Bad Weather Day / Staff Inservice	
May 29: Bad Weather / Staff Inservice	

"Comp" Days / Student Holiday	
November 25-27: Credit for Prof. Learning	

Colt Elementary
2200 Manzano Mile, Marble Falls
(830) 693-3474 office
(830) 693-7092 fax
Erika O'Connor, Principal
eoconnor@mfisd.txed.net
Pre-K through 5th Grade

Highland Lakes Elementary
8200 Hwy 1431 W, Granite Shoals
(830) 798-3650 office
(830) 598-9349 fax
Bethany Birdwell, Principal
bbirdwell@mfisd.txed.net
Pre-K through 5th Grade

Marble Falls Elementary
901 Avenue U, Marble Falls
(830) 693-2385 office
(830) 693-5421 fax
Mike Haley, Principal
mhaley@mfisd.txed.net
Pre-K through 5th Grade

Spicewood Elementary
1005 Spur 191, Spicewood
(830) 798-3675 office
(830) 798-3676 fax
Susan Cox, Principal
secox@mfisd.txed.net
Pre-K through 5th Grade

Marble Falls Middle School
1511 Pony Circle, Marble Falls
(830) 693-4439 office
(830) 693-7788 fax
Roger Barr, Principal
rbarr@mfisd.txed.net
6th Grade through 8th Grade

MFISD STEAM Academy
1511 Pony Circle, Marble Falls
(830) 693-4439 office
(830) 693-7788 fax
Ashley Bernard, Director
abernard@mfisd.txed.net
6th & 7th Grade - 2019-2020

Falls Career High School
1800 Colt Circle, Marble Falls
(830) 798-3621 office
(830) 798-3636 fax
Yarda Leflet, Principal
yleflet@mfisd.txed.net
10th Grade through 12th Grade

Marble Falls High School
2101 Mustang Drive, Marble Falls
(830) 693-4375 office
(830) 693-6079 fax
Damon Adams, Principal
dadams@mfisd.txed.net
9th Grade through 12th Grade

Athletics Dept.
(830) 798-8345 office
(830) 798-3619 fax
Rick Hoover, Director of Athletics

Child Nutrition
(830) 693-5423
Mary Davidson, Director

Maintenance Dept.
(830) 693-2046
(830) 693-1111 fax
Michael Phillips, Director

Special Services
(830) 798-3516
Shana Fancher, Ed.D., Executive Director

Technology Dept.
(830) 693-6497
Nathan Fink, Director

Transportation Dept.
(830) 798-2300
George Hamilton, Director

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Marble Falls ISD



INTEROFFICE MEMORANDUM

Date: March 13, 2019

To: Board of Trustees and Dr. Allen

From: David Hemond, Accounting Supervisor

Subject: Consider Approval of Budget Amendments

Budget amendments included for approval (copies follow):

18-00083	Allocate budget for computer related supplies - \$700
18-00084	Allocate budget for general supplies - \$3,000
18-00085	Increase budget for miscellaneous operating costs - \$588
18-00086	Increase budget for athletic booster club donation - \$10,092
18-00087	Allocate budget for CTE, utilities, and transportation facility - \$1,200,000

**MARBLE FALLS ISD
BUDGET AMENDMENT**

Batch #:		18-00083		Reason for Amendment: INCREASE TO COVER ON-LINE SUBSCRIPTION.	
Fiscal Year:		2018-2019			
Account Number		Account Description		Debit	Credit
EXPENDITURES				Increase	Decrease
1	199-13-6398-00-913-0-99-0-00	COMPUTER RELATED SUPPLIES			700
2	199-11-6398-00-041-0-11-B-00	COMPUTER RELATED SUPPLIES		700	
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REVENUE				Decrease	Increase
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37					
38					
Totals				700.00	700.00
Board Approval Required		Prepared by: Stephanie Barry	Approved by: Dr. Wes Cunningham	Reviewed by: JH	Entered by: JH
☒ Yes ☐ No		Date: 02/28/19	Date: 02/28/19	Date: 2/28/19	Date: 3/11/19

Revised 10-05-17

**MARBLE FALLS ISD
BUDGET AMENDMENT**

Batch #:	18-00084	Reason for amendment: TRANSFER FUNDS TO SUPPLY ACCOUNT		
Fiscal Year:	2018-2019			
Account Number	Account Description	Debit	Credit	
EXPENDITURES		Increase	Decrease	
1	199-E-36-6399-00-041-0-99-0-36	MUSIC-EXTRACURRICULAR		3,000.00
2	199-E-11-6399-00-041-0-11-0-00	GENERAL SUPPLIES	3,000.00	
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REVENUE		Decrease	Increase	
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Totals		3,000.00	3,000.00	-
Board Approval Required		Prepared by: S.Beck	Approved by: <i>RBaw</i>	Reviewed by: <i>JB</i>
☒ Yes ☐ No		Date: 03/04/19	Date: 3/4/19	Date: 3/5/19
			Entered by: <i>JA</i>	Date: 3/11/19

Revised 7-25-17

MARBLE FALLS ISD BUDGET AMENDMENT

Batch #:	18-00085	Reason for Amendment: Reimbursement from Region 13 - Homeless Children & Youth Grant		
Fiscal Year:	2018-2019			
Account Number	Account Description		Debit	Credit
EXPENDITURES			Increase	Decrease
1	199-13-6499-00-913-0-99-0-00	Misc. Operating Costs	587.50	
2				
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33				
REVENUE			Decrease	Increase
34	199-00-5749-00-000-00-000	REVENUE		587.50
35				
36				
37				
38				
Totals			587.50	587.50
Board Approval Required		Prepared by: <i>Stacy</i>	Approved by: <i>[Signature]</i>	Reviewed by: <i>[Signature]</i>
☒ Yes ☐ No		Date: 3-6-19	Date: 3-7-19	Date: 3/8/19
		Date: 3/11/19		

Revised 10-05-17

MARBLE FALLS ISD BUDGET AMENDMENT

Batch #:	18-00086	Reason for Amendment: INCREASE BUDGET FOR ATHLETIC BOOSTER CLUB DONATION		
Fiscal Year:	2018-2019			
Account Number	Account Description		Debit	Credit
EXPENDITURES			Increase	Decrease
1	199-36-6399-00-001-0-91-0-00	GENERAL SUPPLIES	5,091.56	
2	199-36-6412-00-001-0-91-0-00	STUDENT TRAVEL	5,000.00	
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32				
33				
REVENUE			Decrease	Increase
34	199-00-5744-00-000-0-00-0-00	GIFTS & BEQUESTS		10,091.56
35				
36				
37				
38				
Totals			-	10,091.56
Board Approval Required		Prepared by: <i>JK</i>	Approved by: <i>JK</i>	Reviewed by: <i>JK</i>
☒ Yes ☐ No		Date: 3/11/19	Date: 3/11/19	Date: 3/11/19
		Date: 3/11/19	Date: 3/11/19	Date: 3/11/19

Revised 10-05-17

**MARBLE FALLS ISD
BUDGET AMENDMENT**

Batch #:	<i>18-00087</i>	Reason for Amendment: REALLOCATE FUNDING TO CTE & UTILITIES. INCREASE TRANSPORTATION FACILITY			
Fiscal Year:	2018-2019				
Account Number	Account Description			Debit	Credit
EXPENDITURES			Increase	Decrease	
1	199-E-11-6639-00-001-0-22-024	FURNITURE & EQUIPMENT	250,000.00		
2	199-E-81-6629-00-999-0-99-000	BUILDING & IMPROVEMENTS			241,651.00
3	199-E-81-6630-47-999-0-99-X00	FURNITURE & EQUIPMENT			8,349.00
4	199-E-11-6112-00-999-0-99-X00	SUBSTITUTE TEACHERS			141,000.00
5	199-E-11-6112-00-001-0-11-000	SUBSTITUTE TEACHERS			50,000.00
6	199-E-11-6119-00-001-0-11-000	PROFESSIONAL SALARIES			159,000.00
7	199-E-51-6259-29-951-0-22-000	UTILITIES	75,000.00		
8	199-E-51-6259-29-951-0-99-000	UTILITIES	175,000.00		
9	199-E-51-6259-26-951-0-99-000	UTILITIES	100,000.00		
10	199-E-00-8911-00-000-0-00-000	OPERATING TRANSFER OUT			600,000.00
11					
12					
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16					
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24					
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27					
28					
29					
30					
31					
32					
33					
REVENUE			Decrease	Increase	
34		FUND BALANCE	600,000.00		
35					
36					
37					
38					
Totals			-	1,200,000.00	1,200,000.00
Board Approval Required		Prepared by: ML	Approved by: ML	Reviewed by: <i>ML</i>	Entered by: <i>ML</i>
☒ Yes ☐ No		Date: 03/13/19	Date: 03/13/19	Date: <i>3/13/19</i>	Date: <i>3/13/19</i>

Revised 10-05-17



**LEARNERS TODAY,
LEADERS TOMORROW,
MUSTANGS FOREVER!**

**Marble Falls ISD
Board of Trustees
Agenda Item Information**

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing	Agenda Placement: ☐ Public Hearing ☐ Information Items ☐ Presentation/Discussion Items ☐ Consideration Items ☒ Consent Agenda	
Date Submitted: February 20, 2019		
Subject: Certification of Unopposed Candidates for May 4, 2019 Election.		
Executive Summary: Dr. Gasaway has certified the following candidates which filed for the Board of Trustees as unopposed for their respective places for the May 4, 2019 election. Gary Boshears Place 1 Rick Edwards Place 2 The Certification of Unopposed Candidates form is being submitted for approval by the board.		
Fiscal Impact: Cost: ☐ Recurring ☐ One-Time ☒ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Approve the Certification of Unopposed Candidates form for the May 4, 2019 election certifying that the following candidates are unopposed for their respective place filings for the Marble Falls ISD Board of Trustees: Gary Boshears Place 1 Rick Edwards Place 2		
Submitted By: Dr. Jeff Gasaway		
Board Approval Required: ☒ Yes ☐ No		

**CERTIFICATION OF UNOPPOSED CANDIDATES FOR
OTHER POLITICAL SUBDIVISIONS (NOT COUNTY)
CERTIFICACIÓN DE CANDIDATOS ÚNICOS
PARA OTRAS SUBDIVISIONES POLITICAS (NO EL CONDADO)**

To: Presiding Officer of Governing Body
Al: Presidente de la entidad gobernante

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on May 4, 2019

Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en la elección que se llevará a cabo el 4 de Mayo, 2019

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

Office(s) Cargo(s)	Candidate(s) Candidato(s)
Marble Falls ISD Board of Trustees Place 1	Gary Boshears
Marble Falls ISD Board of Trustees Place 2	Rick Edwards


Signature (Firma)

Dr. Jeff Gasaway
Printed name (Nombre en letra de molde)

Assistant Superintendent, Marble Falls ISD
Title (Puesto)

2/20/19
Date of signing (Fecha de firma)

(Seal) (sello)

See reverse side for instructions
(Instrucciones en el reverso)



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LEADERS TOMORROW,
MUSTANGS FOREVER!**

**Marble Falls ISD
Board of Trustees
Agenda Item Information**

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing	Agenda Placement: ☐ Public Hearing ☐ Information Items ☐ Presentation/Discussion Items ☐ Consideration Items ☒ Consent Agenda	
Date Submitted: February 20, 2019		
Subject: Order of Cancellation of the May 4, 2019 Election		
Executive Summary: Dr. Gasaway has certified the 2 incumbent candidates which filed for Place 1 and Place 2 for the Marble Falls Independent School District Board of Trustees as unopposed for their respective places for the May 4, 2019 election. Therefore the Order of Cancellation for the May 4, 2019 election is being presented for approval by the Board.		
Fiscal Impact: Cost: ☐ Recurring ☐ One-Time ☒ No Fiscal Impact	Funding Source: ☐ General Fund ☐ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Approve the Order of Cancellation for the May 4, 2019 election certifying that the following candidates are unopposed and hereby elected to the Marble Falls ISD Board of Trustees: Gary Boshears Place 1 Rick Edwards Place 2		
Submitted By: Dr. Jeff Gasaway		
Board Approval Required: ☒ Yes ☐ No		

ORDER OF CANCELLATION
EJEMPLO DE ORDEN DE CANCELACIÓN

The Marble Falls Independent School District hereby cancels the election scheduled to be held on May 4, 2019 in accordance with Section 2.053(a) of the Texas Election Code. The following candidates have been certified as unopposed and are hereby elected as follows:

El Marble Falls Independent School District por la presente cancela la elección que, de lo contrario, se hubiera celebrado el de conformidad, con 4 de Mayo, 2019

la Sección 2.053(a) del Código de Elecciones de Texas. Los siguientes candidatos han sido certificados como candidatos únicos y por la presente quedan elegidos como se haya indicado a continuación:

Candidate (Candidato)	Office Sought (Cargo al que presenta candidatura)
Gary Boshears	Marble Falls ISD Board of Trustees Place 1
Rick Edwards	Marble Falls ISD Board of Trustees Place 2

A copy of this order will be posted on Election Day at each polling place that would have been used in the election.

El Día de las Elecciones se exhibirá una copia de esta orden en todas las mesas electorales que se hubieran utilizado en la elección.

President (Presidente)

Secretary (Secretario)

(seal) (sello)

Date of adoption (Fecha de adopción)

See reverse side for instructions
Instrucciones en el reverso



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MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: 3.26.19		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3.6.2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Policy Update 112 Affecting Local Policies: BJA, CCG, CCGA, CH, CQ, CV, DCB, DH, DIA, FMA, FNG, GF, GKA, GKB		
Executive Summary: TASB regularly sends updates of legal and local Board policy reflective of changes initiated by state and federal legislation, case law, and Commissioner Rulings. Update 112 provides such amended legal and local policy.		
Fiscal Impact: Cost: ☐ Recurring ☐ One-Time ☒ No Fiscal Impact	Funding Source: ☐ General Fund ☒ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Approve TASB Board Policy Update 112 as presented		
Submitted By: Chris Allen		
Board Approval Required: ☒ Yes ☐ No		

Vantage Points

A Board Member's Guide to Update 112

Please note: *Vantage Points* is an executive summary, prepared specifically for board members, of the TASB Localized Update. The topic-by-topic outline and the brief descriptions focus attention on key issues to assist local officials in understanding changes found in the policies. The description of policy changes in *Vantage Points* is highly summarized and should not substitute for careful attention to the more detailed, district-specific Explanatory Notes and the policies within the localized update packet. **Your district may not have all policy provisions addressed in this update's *Vantage Points*.**

We welcome your comments or suggestions for improving *Vantage Points*. Please write to us at TASB Policy Service, P.O. Box 400, Austin, TX 78767-0400, e-mail us at policy.service@tasb.org, or call us at 800-580-7529 or 512-467-0222.

For more information about Policy Service, visit our website at <http://policy.tasb.org>.

This information is provided for educational purposes only to facilitate a general understanding of the law or other regulatory matter. This information is neither an exhaustive treatment on the subject nor is this intended to substitute for the advice of an attorney or other professional adviser. Consult with your attorney or professional adviser to apply these principles to specific fact situations.

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Update 112 focuses on updating (LEGAL) policies that were affected by changes in administrative rule and commissioner of education rulings. Several (LOCAL) policies have been updated as well to better align with these changes or for organization and restructuring purposes.

Board Ethics

Two legal policies have been revised regarding board member ethics—BBFA(LEGAL) and BBFB(LEGAL). Revisions to BBFA(LEGAL) reflect amended Administrative Code rules addressing financial accountability ratings. Formatting changes were made to BBFB(LEGAL) for accessibility purposes, and existing statutory provisions have been added. Additionally, provisions addressing conflicts of interest for depository contracts were removed, as they are addressed in BDAE(LEGAL).

Superintendent

Minor formatting changes were made to BJA(LOCAL) to improve accessibility for individuals with disabilities, and changes to BJCD(LEGAL) were made to include an existing provision in statute that requires the board to adopt a policy stating that the board employs and evaluates the superintendent.

Business Operations

Extensive revisions were made to several policies in the C section of the manual, which required revisions to the table of contents to add two new codes—CCGA and CCGB—and to rename policies in the CO series.

State and Federal Revenue

Revisions to CBB(LEGAL) were based on changes to federal law increasing certain thresholds under the Education Department General Administrative Regulations (EDGAR) procurement rules and to include links to resources that provide additional information on the issue.

Ad Valorem Taxes

Significant restructuring of CCG(LEGAL) breaks up the content on ad valorem taxes into multiple policy codes, leading to two new policies: CCGA, Exemptions and Payments, and CCGB, Economic Development. CCG(LEGAL) now focuses on adoption of the tax rate and conducting an election to ratify taxes.

CCG SERIES (LOCAL) POLICY CONSIDERATIONS

The district's local policy provisions on exemptions and payments of ad valorem taxes have been moved from CCG to CCGA, and districts with provisions on economic development now have that language coded at CCGB.

Financial Accountability

Revisions to CFA(LEGAL) were made to reflect amended Administrative Code rules that revised the notice provisions for the public hearing on the Financial Management Report.

Additionally, the amended rules allow for the commissioner to change a financial accountability rating in disaster situations, which is reflected in CFC(LEGAL).

**Purchasing and
Construction**

References to COA(LEGAL) have been added to CH(LEGAL) to align with newly added material on food purchases, and the board delegation provision applicable in disaster circumstances has been updated.

CH(LOCAL) AND CV(LOCAL) POLICY CONSIDERATIONS

Recommended revisions to CH(LOCAL) and CV(LOCAL) add a cross-reference to CBB(LEGAL), which addresses procurement requirements for federal awards, as a reminder that other requirements may be applicable if federal funds are involved in a purchase or contract.

We also recommend an adjustment in CH(LOCAL) to acknowledge that any rejection of bids or proposals will be in accordance with state or federal law, as some purchases with federal funds may require a sound, documented reason for rejecting a bid.

**Student
Transportation**

New Administrative Code rules have been added to CNA(LEGAL). The rules include definitions, eligibility and local policy requirements, and reporting requirements for districts seeking additional funds for transportation of students living within two miles of school. Please note that if your district will seek transportation funds for these students or if your district has a community walking transportation program but does not have policy provisions at CNA(LOCAL), then the district should contact its TASB policy consultant for adjustments to the policy.

**Food and
Nutrition
Management**

Existing federal and state provisions have been added to the CO(LEGAL) series to provide more thorough coverage of school nutrition compliance and professional standards, fundraiser standards, unpaid meal policy requirements, food procurement, and the Community Eligibility Provision program.

**Technology
Resources**

CQ(LOCAL) POLICY CONSIDERATIONS

Districts may accept electronic signatures in accordance with state law; however, the rules adopted by the board for allowing such signatures must be consistent, to the extent practicable, with rules from the Department of Information Resources. In order to be in compliance with these rules and to align with most districts' practice of accepting electronic signatures, new language on electronic signatures has been recommended for CQ(LOCAL).

Personnel

Details on the bloodborne pathogen exposure control plan from the Texas Department of State Health Services has been added to DBB(LEGAL).

DP(LEGAL) has been revised in accordance with new rules from the State Board for Educator Certification regarding principal certification.

Term Contracts

Included in DCB(LEGAL) are provisions from a commissioner of education decision explaining that if a district requires a person—by policy, job description, or contract—to hold certification, the district must employ that person under a Chapter 21 contract.

DCB(LOCAL) POLICY CONSIDERATIONS

Reorganization of this local policy on term contracts is recommended to better distinguish the provisions applicable when SBEC requires certification versus when the district requires certification. An adjustment clarifies that only full-time professional employees in positions for which the district requires SBEC certification are entitled to a term contract.

Employee Standards of Conduct

Amended Administrative Code rules have been included in DFE(LEGAL) to clarify that a principal is subject to sanctions for failing to notify the superintendent within seven days after an educator resigns following an alleged incident of misconduct.

DIA(LOCAL) AND DH(LOCAL) POLICY CONSIDERATIONS

We recommend moving to DH(LOCAL) a provision previously at DIA(LOCAL) subjecting employees to discipline for making false claims of discrimination, harassment, and retaliation or refusing to participate in an investigation. Placement of this provision in DH(LOCAL), which addresses the broader topic of employee standards of conduct, clarifies that the district may discipline employees for such conduct in any circumstance, not just in relation to claims of discrimination, harassment, and retaliation.

Additional revisions to DIA(LOCAL) add the word “sex” to the statement of nondiscrimination and to the definition of discrimination for a complete listing of all the protected categories under law and for consistency throughout the policy manual.

Alcohol and Drug Testing	Added provisions at DHE(LEGAL) clarify that Department of Transportation (DOT) alcohol and drug testing must be completely separate from non-DOT testing.
Instruction	New Administrative Code rules addressing the required instruction on proper interaction with a peace officer have been added to EHAC(LEGAL). The policy on elective instruction, EHAD(LEGAL), has been updated to include provisions permitting districts to offer courses in cybersecurity and other elective classes a student would need to obtain an industry-recognized credential or certificate. Amended Administrative Code rules resulted in revisions to dyslexia provisions in EHB(LEGAL), including those regarding screening, parental notification, parent education programs, and access to appropriate programs. Provisions in EHBC(LEGAL) regarding the Optional Extended Year Program have been deleted, as the program has not been funded for several years, and additional details have been added regarding the Optional Flexible School Day Program. Extensive revisions to EHBE(LEGAL) on bilingual education are from amended Administrative Code rules that were revised to align with TEA practice and the Every Student Succeeds Act (ESSA) State Plan.
Credit By Examination	The State Board of Education changed the rules regarding credit by examination without prior instruction to include audit and annual reporting requirements. Language has been revised in EHDC(LEGAL) to reflect these recent changes.
Academic Achievement	Amended rules required changes to EI(LEGAL) regarding notations on a student's transcript. Changes to EIF(LEGAL) were made in accordance with amended Administrative Code rules that permit a student to satisfy one of the two credits required in a language other than English by completing a dual language immersion program.
Students Health	There were several revisions made to the policy on medical treatment for students, FFAC(LEGAL). The revisions cover existing statutory provisions and provisions from new Administrative Code rules regarding the maintenance and administration of unassigned epinephrine auto-injectors.

**School-
Sponsored
Publications**

FMA(LOCAL) POLICY CONSIDERATIONS

Recommended revisions to FMA(LOCAL) clarify that district and campus publications are under the district’s control and school-sponsored publications approved by a principal and published by students are part of the instructional program. We also recommend adding a Note pointing to GKB for relevant advertising provisions and deleting the unnecessary complaint provision.

**Juvenile Justice
Alternative
Education
Program**

Newly adopted Administrative Code provisions regarding juvenile justice alternative education programs (JJAEPs) incorporated in FODA(LEGAL) include requirements for a JJAEP to develop entry and exit transition plans for a student, file the annual memorandum of understanding with the district and county juvenile board by a certain date, and provide a copy of the JJAEP’s performance report to the district superintendent.

**Community
Relations**

**Conduct on
District-
Controlled
Property**

Revisions to GKA(LEGAL) stem from a commissioner of education rule addressing Education Code 37.105, which authorizes district officials to refuse entry to or eject a person from property under the district’s control in certain circumstances. The new rule also requires the board to adopt a policy that allows a person refused entry to or ejected from the property to appeal using the district’s current grievance process and permits a person appealing to address the board in person within 90 days of filing the complaint unless the complaint is resolved before reaching the board. Another revision to GKA(LEGAL) adds the separate trespass provision from the Education Code to distinguish the district’s authority to pursue trespass charges from the Education Code 37.105 provisions.

FNG(LOCAL), GF(LOCAL), GKA(LOCAL) POLICY CONSIDERATIONS

The new rule at GKA(LEGAL) also affects FNG, GF, and GKA(LOCAL). Revisions to GKA(LOCAL) clarify that a district official will give a person refused entry to or ejected from property under the district’s control written information explaining the right to appeal and explain the relevant complaint timeline. A paragraph addressing the 90-day timeline to address the board has been added to FNG(LOCAL) and GF(LOCAL).

District Speech

A recent U.S. Supreme Court case clarifies that the district’s statements and actions that take the form of speech do not create a forum for private speech and a district does not engage in unconstitutional viewpoint discrimination by sharing its viewpoints on permissible goals. These revisions have been added to GKB(LEGAL).

Advertising

GKB(LOCAL) POLICY CONSIDERATIONS

In line with current case law, recommended revisions to the advertising provisions in GKB(LOCAL) specify when a district may reject advertising. New provisions are also recommended to clarify that a district's acknowledgment of sponsorships and donations may be in the manner the district deems appropriate and that the district retains full editorial control.

CPS Investigations

Finally, GRA(LEGAL) has been updated to add details on Department of Family and Protective Services investigations regarding allegations of child abuse or neglect in schools.



**LEARNERS TODAY,
LEADERS TOMORROW,
MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: March 13, 2019	Agenda Placement: ☐ Public Hearing ☐ Information Items ☒ Presentation/Discussion Items ☐ Consideration Items ☐ Consent Agenda	
Subject: Local Policy EIF and EIC		
Executive Summary: This presentation is designed to share a brief update of Local Policy recommendations being made as a result of the MFISD Grading Committee and Executive Grading Committee.		
Fiscal Impact: Cost: ☐ Recurring ☐ One-Time ☒ No Fiscal Impact	Funding Source: ☐ General Fund ☒ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: We recommend approval of changes made to Local Policy EIC and EIF, as presented.		
Submitted By: Wes Cunningham		
Board Approval Required: ☒ Yes ☐ No		

DRAFT- 03.04.19 revised

Process

During the senior year, ranking shall be reported once during the first four weeks of the school year based upon coursework completed in grades 9–11 and a second time in January. A final rank shall be reported at the Senior Scholarship Awards Night. The final ranking shall be computed after the third nine-week grading period of the final semester.

Students entering grade 9 during the 2014–15 school year and thereafter shall utilize the weighted rank point chart, which shall be used to calculate a student's weighted cumulative rank average but is not reflected in the actual numerical grade recorded for each course on the academic achievement record (transcript) or report card. Actual numerical semester grades shall be converted to weighted rank points according to the weighted rank point chart. The average used to calculate class rank shall be the sum of the total weighted rank points divided by the total number of ranked semester courses taken in high school.

Grades earned through correspondence courses, credit by examination for acceleration, credit by examination for credit restoration, summer school, and middle school/junior high courses not taken on the high school campus shall not be used in the computation of class rank.

Note: Grades below 70 in honors, Advanced Placement (AP), Pre-AP, or dual credit classes shall not have extra points added at any point.

Extra points shall not be added for the following:0)

1. On the report card;
2. On the transcript; or
3. For honor roll determination.

**Valedictorian /
Salutatorian**

Only students enrolled in and completing high school in eight consecutive semesters and enrolled in the District for their last four semesters shall be eligible to be valedictorian or salutatorian. Early graduates (three-year and December graduates) shall not be eligible to be valedictorian or salutatorian. These early graduates shall be dually ranked with the four-year graduates. After completing the ranking for the four-year graduates, the early graduates shall be ranked. A dual ranking shall be created by placing the early graduates at the level they would have been placed if the District had one ranking list.

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(LOCAL)

All December and three-year graduates who complete their last four semesters in the District and who are dually ranked in the top ten percent, and students who did not attend the District's high school the last four semesters and rank in the top ten percent, shall not be listed as honor graduates. They shall, however, receive special recognition for their academic achievements at graduation.

Rank	Points	Numerical Grades	
		AP	
8.0	100		
7.9	99		
7.8	98		
7.7	97		
7.6	96		
7.5	95		
7.4	94		
7.3	93		
7.2	92		
7.1	91	Pre-AP/Dual Credit	
7.0	90	100	
6.9	89	99	
6.8	88	98	
6.7	87	97	
6.6	86	96	
6.5	85	95	
6.4	84	94	
6.3	83	93	
6.2	82	92	
6.1	81	91	On Level
6.0	80	90	100
5.9	79	89	99
5.8	78	88	98
5.7	77	87	97
5.6	76	86	96
5.5	75	85	95
5.4	74	84	94

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(LOCAL)

Rank Points		Numerical Grades		
5.3	73	83	93	
5.2	72	82	92	
5.1	71	81	91	Below Level
5.0	70	80	90	100
4.9	69	79	89	99
4.8	68	78	88	98
4.7	67	77	87	97
4.6	66	76	86	96
4.5	65	75	85	95
4.4	64	74	84	94
4.3	63	73	83	93
4.2	62	72	82	92
4.1	61	71	81	91
4.0	60	70	80	90
3.9	59	69	79	89
3.8	58	68	78	88
3.7	57	67	77	87
3.6	56	66	76	86
3.5	55	65	75	85
3.4	54	64	74	84
3.3	53	63	73	83
3.2	52	62	72	82
3.1	51	61	71	81
3.0	50	60	70	80
*****	*****	*****	*****	*****
ETC.	ETC.	ETC.	ETC.	ETC.

Highest-Ranking Graduate

The student meeting the local eligibility criteria for recognition as the valedictorian shall also be considered the highest-ranking graduate for purposes of receiving the honor graduate certificate from the state of Texas.

Note: The following provisions shall apply to students beginning with the graduating class of 2023.

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(LOCAL)

Consistent
Application for
Graduating Class

The District shall apply the same class rank calculation method and rules for local graduation honors for all students in a graduating class, regardless of the school year in which a student first earned high school credit.

Calculation

The District shall include in the calculation of class rank semester grades earned in high school credit courses taken in grades 9-12 in the following subject areas only: language arts, mathematics, science, social studies, and languages other than English, unless excluded below.

The calculation shall include failing grades.

Exclusions

The calculation of class rank shall exclude grades earned in summer school; a distance learning course, unless the course is offered through the District as a course option along with traditional courses; credit by examination with or without prior instruction; any local credit course; any course for which a pass/fail grade is assigned; college credits that are not dual credit; and languages other than English courses taken concurrently outside normal school hours.

Falls Career High School shall not provide a class rank.

Weighted Grade
System

The District shall categorize and weight eligible courses as (*Tier III*, *Tier II*, and *Tier I*) in accordance with provisions of this policy and as designated in appropriate District publications.

Categories

Tier III

Eligible *Advanced Placement (AP)* courses shall be categorized and weighted as *Tier III* courses.

Tier II

Eligible *Pre-AP* courses, *dual credit*, and *honors* courses shall be categorized and weighted as *Tier II* courses.

Tier I

All other eligible courses shall be categorized and weighted as *Tier I* courses.

Weighted Grade
Point Average

The District shall convert semester grades earned in eligible courses to grade points in accordance with the following chart and shall calculate a weighted grade point average (GPA):

Grade	<i>Tier III</i>	<i>Tier II</i>	<i>Tier I</i>
100	6.0	5.0	4.0
99	5.9	4.9	3.9
98	5.8	4.8	3.8
97	5.7	4.7	3.7

ACADEMIC ACHIEVEMENT
CLASS RANKING

EIC
(LOCAL)

Grade	<i>Tier III</i>	<i>Tier II</i>	<i>Tier I</i>
96	5.6	4.6	3.6
95	5.5	4.5	3.5
94	5.4	4.4	3.4
93	5.3	4.3	3.3
92	5.2	4.2	3.2
91	5.1	4.1	3.1
90	5.0	4.0	3.0
89	4.9	3.9	2.9
88	4.8	3.8	2.8
87	4.7	3.7	2.7
86	4.6	3.6	2.6
85	4.5	3.5	2.5
84	4.4	3.4	2.4
83	4.3	3.3	2.3
82	4.2	3.2	2.2
81	4.1	3.1	2.1
80	4.0	3.0	2.0
79	3.9	2.9	1.9
78	3.8	2.8	1.8
77	3.7	2.7	1.7
76	3.6	2.6	1.6
75	3.5	2.5	1.5
74	3.4	2.4	1.4
73	3.3	2.3	1.3
72	3.2	2.2	1.2
71	3.1	2.1	1.1
70	3.0	2.0	1.0
Below 70	0	0	0

Transferred
Grades

When a student transfers semester grades for courses that would be eligible under the *Tier I* category and the District has accepted the credit, the District shall include the grades in the calculation of class rank.

When a student transfers semester grades for courses that would be eligible to receive additional weight under the District's weighted grade system, the District shall assign additional weight to the grades based on the categories and grade weight system used by the District only if a similar or equivalent course is offered to the same class of students in the District.

**Local Graduation
Honors**

For the purpose of determining honors to be conferred during graduation activities, the District shall calculate class rank in accordance with this policy and administrative regulations by using grades available at the time of calculation at the end of the third nine-week grading period of the senior year.

For the purpose of applications to institutions of higher education, the District shall also calculate class rank as required by state law. The District's eligibility criteria for local graduation honors shall apply only for local recognitions and shall not restrict class rank for the purpose of automatic admission under state law. [See EIC(LEGAL)]

**Valedictorian and
Salutarian**

The valedictorian and salutarian shall be the eligible students with the highest and second-highest rank, respectively. To be eligible for this local graduation honor, a student must:

0.

1. Have been continuously enrolled in the District high school for the four semesters immediately preceding graduation;
2. Be graduating after exactly eight semesters of enrollment in high school; and
3. Have completed the foundation program with at least one endorsement.

Breaking Ties

In case of a tie in weighted GPAs after calculation to the fourth decimal place, the District shall apply the following methods, in this order, to determine recognition as valedictorian or salutarian: 0.

1. Count the number of *Tier III* courses taken by each student involved in the tie.
- ~~1.~~2. Calculate a *weighted GPA* using only eligible grades in *Tier II and Tier I* courses taken by each student involved in the tie.

If the tie is not broken after applying these methods, the District shall recognize all students involved in the tie as sharing the honor and title.

**Highest-Ranking
Graduate**

The student meeting the local eligibility criteria for recognition as the valedictorian shall also be considered the highest-ranking graduate for purposes of receiving the honor graduate certificate from the state of Texas.

EIF(LOCAL) - ACADEMIC ACHIEVEMENT: GRADUATION

Table of Contents

Course Requirements

To graduate, a student must complete the courses required by the District in addition to those mandated by the state.

Foundation Program

The courses that satisfy District requirements under the foundation program, including courses for the distinguished level of achievement and courses for endorsements offered by the District, shall be listed in appropriate District publications.

Without an Endorsement

The District requires completion of 4 credits in addition to the number mandated by the state for graduation under the foundation program without an endorsement. Graduation under the foundation program without an endorsement shall be permitted only as authorized under state law and rules.

Marble Falls Career High School

The District requires no additional credits beyond the number mandated by the state to graduate under the foundation program without an endorsement for students in Marble Falls Career High School. Graduation under the foundation program without an endorsement shall be permitted only as authorized under state law and rules.

With an Endorsement

The District requires completion of 2 credits in addition to the number mandated by the state for graduation under the foundation program with an endorsement.

Marble Falls Career High School

The District requires no additional credits beyond the number mandated by the state for graduation under the foundation program with an endorsement for students in Marble Falls Career High School.

Distinguished Level of Achievement

The District requires completion of 2 credits in addition to the number mandated by the state for graduation under the foundation program with the distinguished level of achievement.

Fine Arts Substitutions

To the extent permitted by state rules, the District shall award state graduation credit in fine arts for participation in an approved community-based fine arts program.

Physical Education Substitutions

Activities and Courses

To the extent permitted by state rules, the District shall award state graduation credit in physical education for participation in approved activities and elective courses.

Private or Commercial Programs

The District shall award state graduation credit in physical education for appropriate private or commercially sponsored physical activity programs conducted either on or off campus, upon approval by the commissioner of education. [See also EHAC]

Marble Falls Independent School District
Board Meeting Minutes
February 19, 2019

Kevin Naumann, President, called the regular meeting to order at 6:03 p.m. at the Marble Falls ISD Administration Building. A quorum was present; notice of this meeting was posted in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

Board Members Present: Kevin Naumann, Kevin Virdell, Alex Payson, Rick Edwards, Gary Boshears and Larry Berkman

Board Members Absent: Lee Ann Johnson

Administrators Present: Dr. Chris Allen, Dr. Wes Cunningham, Dr. Jeff Gasaway, Melissa Lafferty, Dr. Shana Fancher, Mike Haley, Bethany Birdwell, Susan Cox, Allie Hampton, Michael Phillips, Yada Leflet, Roger Barr, Soor-el Puga, Damon Adams, Heather Metzgar, Dr. Melissa Fields and Ashley Bernard.

Members of the Press: Nathan Hendrix, The Highlander News

Special Recognitions

Superintendent's Award

Roger Barr, Marble Falls Middle School Principal, recognized eighth graders; Cade Knight and Brooklyn Levert, with quotes from their teachers describing their excellent character traits. Dr. Allen gave them each a gift card, mustang pin and certificate.

Marble Falls High School Cheerleaders

Lauren Berkman, Cheer Sponsor, introduced each cheerleader and recognized her for their hard work on and off the field. The team earned sixth place in the UIL spirit competition and had five seniors receive academic acknowledgements, earning a 96 average in all classes for all four years of high school.

CTE Month

Heather Metzgar, Director of Secondary Education, presented to the Board regarding all the accomplishments in the CTE program this past year and shared a video created by the AV class.

The Board took a recess at 6:47 p.m. and reconvened at 6:53 p.m.

Citizens Comments

No one asked to speak.

Information Items

Financial Report

- General Fund Summary
- Expenditure Report

Presentation/Discussion Items and Possible Action

Contract for Geotechnical Engineering Services with Raba Kistner

Dr. Chris Allen, Superintendent, explained that the school district with advice from legal representatives have negotiated a contract for geotechnical engineering services with Raba Kistner.

Upon a motion by Gary Boshears, second by Rick Edwards, the Board approved the geotechnical engineering services contract with Raba Kistner Inc.

For: 6 Against: 0 Absent: 1

Bond Update

Dr. Chris Allen, Superintendent, gave high-level updates of administrations efforts to move the process of completing bond projects forward including turf and track replacement, paves and drives, renovations and the CMAR process.

Policy Update 112, affecting local policies BJA, CCG, CCGA, CH, CQ, CV, DCB, DH, DIA, FMA, FNG, GF, GKA and GKB

Dr. Chris Allen, Superintendent, gave an update regarding changes initiated by state and federal legislation sent by TASB. No action was taken. The District will seek approval next month.

EIC (Local) and EIF (Local) Policy Updates

Dr. Wes Cunningham, Assistant Superintendent, shared a brief update of local policy recommendations being made as a result of the MFISD grading committee and executive grading committee. No action was taken. The District will seek approval next month.

IMA Process Update

Dr. Melissa Fields highlighted the time line for procurement and the process for instructional material selection being used in MFISD for Language Arts Classes for PK-8 grades for use in the 2019-2020 school year as part of the most recent IMA Proclamation. No action was taken at this time.

Food Service Price Change

Dr. Jeff Gasaway, Assistant Superintendent, discussed the last time that prices were adjusted for student/adult meals was April 2015. Since that time, we have seen the Child Nutrition's Fund Balance decrease this past year and anticipate a decrease this year. Some of the contributing factors are student participation, percentage of students identified as Free and Reduced, food costs, and cost of personnel. No action was taken at this time. The District will seek approval next month.

Consider and Possible Approval of Action

Consent Agenda

Upon a motion by Gary Boshears, second by Alex Payson, the Board approved the following as presented:

- Minutes from Regular Board Meeting held on January 22, 2019
- Budget Amendments

For: Rick Edwards, Gary Boshears, Kevin Naumann, Alex Payson, and Kevin Virdell
Against: None
Absent: Lee Ann Johnson
Abstained: Larry Berkman

Approve Contract for HVAC and Potential LED Project

Upon a motion by Kevin Virdell, second by Alex Payson, the Board approved the Project Development Agreement between MFISD and E3 as presented.

For: 6 Against: 0 Absent: 1

School Bus Lift Purchase

Upon a motion by Alex Payson, second by Kevin Virdell, the Board approved the purchase of approximately \$60,510 for the Stertil-Koni Heavy Duty Mobile Column Lifts from Reeder Distributors, INC.

For: 6 Against: 0 Absent: 1

2019-2020 Instructional Calendar

Upon a motion by Rick Edwards, second by Alex Payson, the Board approved the 2019-2020 instructional calendar "Draft 1" as presented.

For: 6 Against: 0 Absent: 1

Upcoming Meetings

Tuesday, March 26, 2019 - Regular Board Meeting

Monday, April 15, 2019 – Regular Board Meeting

Monday, April 29, 2019 – Special Board Meeting

Monday, May 20, 2019 – Regular Board Meeting

Executive Session

At 8:12 p.m., the Board adjourned into executive session to consult with Board attorney (TX Govt. Code 551.071), discuss professional personnel (TX Govt. Code 551.074), discuss real property (TX Govt. Code 551.072), discuss safety (TX Govt. Code 551.076), discuss Superintendent's evaluation (TX Govt. Code 551.074) and Superintendent's contract (TX Govt. Code 551.074).

The Board reconvened from executive session at 9:43 p.m.

Discussion and Possible Approval of Action Arising from Executive Session Superintendent's Evaluation

Upon a motion by Gary Boshears, second by Rick Edwards, the Board approved the evaluation for Dr. Chris Allen as presented in closed session.

For: 6 Against: 0 Absent: 1

Superintendent's Contract

Upon a motion by Gary Boshears, second by Alex Payson, the Board approved the contract to start March 1, 2019 for Dr. Chris Allen as presented in closed session.

For: 6 Against: 0 Absent: 1

Adjournment

Hearing no objection, the Board adjourned at 9:45 p.m.

Approved:

Kevin Naumann, President

Gary Boshears, Secretary



**LEARNERS TODAY,
LEADERS TOMORROW,
MUSTANGS FOREVER!**

Marble Falls ISD
Board of Trustees
Agenda Item Information

Meeting Date: March 26, 2019		
Meeting Type: ☒ Regular Meeting ☐ Special Meeting/Workshop ☐ Hearing Date Submitted: 3/14/19	Agenda Placement: ☐ Public Hearing ☐ Information Items ☐ Presentation/Discussion Items ☐ Consideration Items ☒ Consent Agenda	
Subject: Waiver of Penalties and Interest		
Executive Summary: According to Property Tax Code, Chapter 33, Section 33.011, the governing body of a taxing unit may waive penalties and interest on delinquent tax payments if the reason for the delinquency fits within the specific circumstances that are defined in the code.		
Fiscal Impact: Cost: ☐ Recurring ☒ One-Time ☐ No Fiscal Impact	Funding Source: ☒ General Fund ☐ Grant Funds ☐ Bond Funds ☐ Other Funds (Specify)	Fiscal Year: Amendment Required? ☐ Yes ☒ No
Administration's Recommendation: Approval/disapproval of waivers as recommended by administration.		
Submitted By: Melissa Lafferty		
Board Approval Required: ☒ Yes ☐ No		

2018 Property Taxes

Penalty and Interest

Waiver Requests

1. Property ID #33732

Property Address: 639 CR 423, Spicewood, TX 78669

Taxpayer:

Prima Mosi for P.A.W.S. of Austin, a non-profit animal rescue organization

Situation:

- a) Submitted payment through the BCAD automated system on Jan. 14, 2019. Did not realize transaction failed until Feb. 14th.
- b) Taxpayer has no confirmation of proof for the initial payment. System gives the option to print confirmation.
- c) Paid taxes as soon as realized. BCAD paid Feb. 14th
- d) Paid within 21 days of knowledge of delinquency
- e) \$196.71- MFISD portion of penalty

Tax Code: Sec. 33.011(a)(3)(A-D) "The governing body of a taxing unit may waive penalties and interest on a delinquent tax if the taxpayer submits evidence showing that: 1. They attempted to pay the tax before the delinquency date. 2. The taxpayer paid the tax within 21 days after the knowledge of the delinquency.

Recommendation:

Waive penalties and interest

2. Property ID #61837

Property Address: Singleton Bend Rd, TX 78654

Taxpayer:

Terri L Gilliland

Situation:

- a) Submitted payment by check to BCAD on 1/29/19. The check payment was returned by the taxpayer's bank.

- b) The taxpayer's bank had previously placed the account status to "credits only" due to unauthorized ACH debits on the account.
- c) Taxpayer was unaware of the account status change at the time of payment of taxes.
- d) BCAD received tax payment 2/21/19
- e) Bank Vice President notified school district by email on 2/22/19 about the circumstances. The account had sufficient funds and the payment cleared the account on 2/25/19.
- f) Paid within 21 days of knowledge of delinquency
- g) \$521.27- MFISD portion of penalty

Tax Code: Sec. 33.011(a)(3)(A-D) "The governing body of a taxing unit may waive penalties and interest on a delinquent tax if the taxpayer submits evidence showing that: 1. They attempted to pay the tax before the delinquency date. 2. The taxpayer paid the tax within 21 days after the knowledge of the delinquency.

Recommendation:

- a) Waive penalties and interest

3. Property ID #72414 and #62151

Property Address: 26905 W State Hwy 71, 78669

Taxpayer:

Ranch at Fall Creek L.P.

Situation:

- a) Taxpayer has two properties as identified above
- b) Both original property tax statements were sent to the same address
- c) One statement was received (#62151) and paid timely by the taxpayer.
- d) The second statement (#72414) was returned to BCAD in the mail on 10/18/18 by the post office as an undeliverable address.
- e) BCAD sent a second statement 10/18/18 to the second known address.
- f) Taxpayer claims they became aware on 3/4/19 of the delinquency
- g) Still delinquent \$2,662.36 as of 3/13/19

Tax Code: Sec. 33.011(b)(1) "If a tax bill is returned undelivered to the taxing unit by the U.S. Postal Service, the governing body of the taxing unit shall waive penalties and interest if: the taxing unit does not send another tax bill on the property at least 21 days before the delinquency date to the current mailing address furnished by the property owner and the property owner establishes that a current mailing address was furnished to the

appraisal district by the property owner for the tax bill before September 1 of the year in which tax is assessed.

Recommendation:

Not waive penalties and interest.

4. Property ID #101425

Property Address: West FM 1431 Commercial

Taxpayer:

Steven & Cynthia Pearce

Situation:

- a) Taxpayer forgot and did not realize they had not paid taxes until mid-February.
- b) Taxpayer claims the oversight was due to them being preoccupied with wife's stomach cancer diagnosis. They had spent most of their time in Houston at MD Anderson. Wife had surgery on January 24th.
- c) Taxpayer is respectfully asking for a one-time waiver of the penalty and interest of \$537.36.
- d) This circumstance does not fit within the statute to waive penalties and interest.
- e) Taxes were paid to BCAD on 2/19/19

Tax Code: Sec. 33.011(a)(3)(A-D) "The governing body of a taxing unit may waive penalties and interest on a delinquent tax if the taxpayer submits evidence showing that: 1. They attempted to pay the tax before the delinquency date. 2. The taxpayer paid the tax within 21 days after the knowledge of the delinquency.

Recommendation:

Waive penalties and interest.