

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



**Marble Falls ISD  
Special Meeting**

**Monday, April 29, 2019  
6:00 PM**

**AGENDA OF SPECIAL MEETING  
MARBLE FALLS INDEPENDENT SCHOOL DISTRICT  
BOARD OF TRUSTEES  
MONDAY, APRIL 29, 2019 – 6:00 PM  
Marble Falls ISD Central Office Community Room**

Notice is hereby given that on April 29, 2019, the Board of Trustees of the Marble Falls Independent School District will hold a Special 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
3. Presentation/Discussion Items and Possible Action
  - A. Budget Workshop  
Presenter: Melissa Lafferty
4. Consider and Possible Approval of Action
  - A. TASB Contract for HVAC/LED Bond Project 4  
Presenter: Dr. Jeff Gasaway
  - B. HVAC/LED Project Contract 13  
Presenter: Dr. Jeff Gasaway
  - C. Third Party Independent Reviewer 156  
Presenter: Dr. Jeff Gasaway
  - D. CMAR Contract with Satterfield and Pontikes 158
  - E. Turf & Track Replacement Contract with Paragon Sports 180
  - F. CTE/STEAM Materials & Supplies 256  
Presenter: Dr. Wes Cunningham
5. Executive Session
  - A. Discussion of Professional Personnel (TX Govt. Code 551.074)
  - B. Discussion of Personally Identifiable Student Information (TX Govt. Code 551.0821)
6. Reconvene from Executive Session
7. Discussion and Possible Approval of Action Arising from Executive Session
  - A. Possible Approval of Personnel
8. 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



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

**Marble Falls ISD  
Board of Trustees  
Agenda Item Information**

Meeting Date:		
Meeting Type: Regular Meeting Special Meeting/Workshop Hearing	Agenda Placement: Public Hearing Information Items Presentation/Discussion Items Consideration Items Consent Agenda	
Date Submitted:		
Subject:		
Executive Summary:		
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:		
Submitted By:		
Board Approval Required:    Yes    No		

## **ENERGY SERVICES AGREEMENT**

This **Energy Services Agreement** (“Agreement”) is entered into by and between the **Texas Association of School Boards, Inc.** (“TASB”), a Texas nonprofit corporation, 12007 Research Boulevard, Austin, Texas 78759, acting by and through its authorized representative, and **Marble Falls Independent School District** (“Client”), an independent school district and political subdivision of the State of Texas, 1800 Colt Circle, Marble Falls, Texas 78654, acting by and through its duly authorized representative. TASB and Client are also hereinafter referred to individually as “Party” and collectively as the “Parties”.

### **RECITALS**

**WHEREAS**, TASB and Entegral submitted a joint Statement of Qualifications in response to Client’s Request for Qualifications “(RFQ)” for Design Build Services for 2018 Bond HVAC and LED Project (“Project”); and

**WHEREAS**, Client selected TASB and Entegral; and

**WHEREAS**, Entegral will implement the Project in accordance with the Project Design-Build Agreement(s) (“Project Design-Build Agreement”) to be entered into between Client and Entegral; and

**WHEREAS**, TASB will provide certain services (“TASB Services”) to Client related to the implementation of the Project;

**NOW, THEREFORE**, the Parties hereto mutually agree to the consideration recited herein, the receipt and adequacy of which is hereby acknowledged, and mutually agree upon the following:

**1. PURPOSE AND SCOPE.** This Agreement establishes the terms and conditions that apply to TASB Services performed for Client. The specific scope and details of the TASB Services to be provided are set out in writing in Exhibit A of this Agreement.

**2. TERM.** This Agreement begins on the Effective Date and, subject to Paragraph 3, continues until 120 days after final payment is made by Client to Entegral under the Project Design-Build Agreement.

**3. TERMINATION.** Either Party may terminate this Agreement at any time by giving the other Party advance written notice, which notice will specify the effective date of the termination. Termination of this Agreement is contingent upon Client’s additional termination of the Project Design-Build Agreement. If this Agreement is terminated, Client will pay all amounts due to Entegral under said Project Design-Build Agreement.

**4. RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR.** In performing TASB Services, TASB is at all times an independent contractor. Client will have no control over the methods and means of accomplishing the desired result. Under no circumstances will TASB or an employee or agent of TASB be deemed to be an employee or agent of Client. Nothing in this

Agreement will be construed to authorize either Party to make commitments of any kind for the other without the other Party's prior written approval. This Agreement does not constitute or create, and will not in any way be construed, as a joint venture, partnership, or agency between Client and TASB. Further, in performing TASB Services, TASB does not act and will not be deemed to be acting in a fiduciary capacity and owes no fiduciary duty to Client, and is not and shall not be deemed to be providing legal advice to Client.

**5. SUBCONTRACTORS.** TASB may use one or more subcontractors (including sub-subcontractors) to perform TASB Services, provided that such subcontractors have the licenses, permits, and approvals required by applicable law.

**6. PAYMENT.** Client will not directly pay TASB any amount for TASB Services performed under this Agreement. The amount to be paid to TASB by Entegral for TASB Services is included in the price of the Project which amount shall be as set forth on the attached Exhibit B. The parties agree that said amount paid by Entegral to TASB is good and valuable consideration. TASB agrees that Client has no duty to make any further payment to TASB for such services.

**7. WARRANTIES.** TASB Services will be performed in a good and workmanlike manner, and will conform to the applicable requirements and specifications in the Project Design-Build Agreement.

TO THE FULL EXTENT PERMITTED BY LAW, TASB DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD TO ANY INFORMATION, PRODUCTS OR SERVICES FURNISHED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**8. LIMITATION OF LIABILITY.** To the full extent permitted by law, TASB's liability to Client under this Agreement is limited to the total dollar amount paid by Client to Entegral for TASB Services pursuant to the Project Design-Build Agreement giving rise to such liability.

IN NO EVENT WILL TASB OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE TO CLIENT OR ANY THIRD PARTY, FOR CLAIMS FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR ANY INDIRECT DAMAGES OF ANY NATURE (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR ANY LOSS OF USE, LOSS OF TIME, INCONVENIENCE, COMMERCIAL LOSS, OR LOST PROFITS, SAVINGS, OR REVENUE) ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, WHETHER ARISING IN TORT, CONTRACT, WARRANTY, STRICT LIABILITY, BY OPERATION OF LAW, OR OTHERWISE, TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW.

**9. COMPLIANCE WITH LAW AND SAFETY.** Each Party will comply with all applicable federal, state and local laws, rules, regulations and orders, including without limitation those that require licensing and permitting and those that apply to the handling, management, transport, treatment and/or disposal of unutilized materials and waste and toxic materials and waste. As part

of this obligation, each Party agrees that it will not knowingly take any action in connection with performance that would be illegal or that would violate such laws, rules, regulations and orders.

TASB is in the business of providing TASB Services and generally understands the currently known hazards to persons, property and the environment in working with toxic and hazardous materials that may be present with respect to TASB Services performed under this Agreement. Regardless of this understanding, Client will notify TASB's employees and agents of any known or suspected hazards on Client's property.

**10. ENGINEERING SERVICES.** Client recognizes that TASB is not an engineering firm. TASB will not perform any TASB Services under this Agreement that constitute or implicate engineering or the practice of engineering. Entegral is solely responsible for the performance of engineering required in connection with the development and implementation of the Project. Entegral will provide services that constitute or implicate engineering or the practice of engineering in accordance with the applicable provisions of the Texas Engineering Practice Act, Subchapter M, Chapter 1001 of the Occupations Code, and the rules and regulations adopted thereunder.

Client agrees that TASB shall bear no liability of any kind for any claim, liability or cost (including, without limitation, changes in scope occurring as a result of design refinement) arising from errors, omissions or inaccuracies in the engineering documents or other engineering related information provided by Entegral.

**11. FELONY CONVICTION NOTICE.** TASB, a 501(c) nonprofit corporation, represents and warrants that no officer or director of TASB has been convicted of a felony. Should it become known to TASB that any TASB officer or director is convicted of a felony while this Agreement is in effect, TASB will notify Client of such conviction.

**12. CRIMINAL HISTORY RECORD CHECKS.** TASB will comply with and obtain all criminal history information required by applicable law with respect to TASB employees who will be providing Services on Client premises or other location at which students may be present. Specifically, with respect to such employees, TASB will (i) obtain state or national criminal history as required; (ii) certify compliance to Client; (iii) upon request, provide identifying information on the employees to Client; and (iv) prohibit employees with disqualifying criminal history, as defined in Tex. Educ. Code §22.085, from performing Services for Client. TASB will assume all expenses associated with obtaining criminal history record information. If Client objects to the assignment of any TASB employee on the basis of the employee's criminal history record information, TASB agrees to immediately discontinue using that employee to provide Services under this Agreement.

**13. MISCELLANEOUS:**

**a. WAIVERS.** Failure by either Party to enforce any provision of this Agreement does not waive future enforcement of that or another provision. No right or obligation of a Party may be waived without the prior written consent of the other Party.

**b. SUCCESSION AND ASSIGNMENT.** This Agreement inures to the benefit of and is binding upon the parties and their respective successors and assigns. Either Party may assign or transfer its rights or obligations under this Agreement with the prior written consent of the other Party.

**c. MEDIATION.** The Parties agree that, before bringing a lawsuit for any dispute arising out of this Agreement, they will first make a good faith effort to resolve the dispute by mediation. Each Party's representative in the mediation must have full authority to compromise and settle any dispute that is the cause of the proceeding, and the results of the mediation will be binding only upon agreement of each Party to be bound. The mediation will be held in Austin, Travis County, Texas, or at another location mutually agreed upon by the parties. Each Party will pay its own expenses for participating in the mediation, including one-half of the mediator's fees.

**d. NOTICES.** Unless otherwise agreed between the Parties in writing, all notices, requests, and other communications related to this Agreement will be in writing and be delivered by personal delivery, registered or certified mail (return receipt requested), express courier (with postage prepaid), or electronic facsimile or email (with electronic confirmation of receipt by recipient) addressed to the receiving Party at the addresses set out below:

Marble Falls ISD:

Marble Falls ISD  
Attn: Superintendent of Schools

1800 Colt Circle  
Marble Falls, Texas 78654

TASB:

Texas Association of School Boards, Inc.  
Attention: Jeff Clemmons  
12007 Research Blvd.  
Austin, TX 78759

Either Party may change its notice information by giving the other Party written notice of the change.

**e. SEVERABILITY.** If any part of this Agreement is declared or held unenforceable for any reason, the remaining parts will continue in full force and effect.

**f. GOVERNING LAW, RULE OF CONSTRUCTION, AND VENUE.** This Agreement is governed by the laws of the State of Texas without regard to its conflict of laws provisions, and without giving effect to any custom or rule of law requiring construction against the drafter. Venue for any action arising out of this Agreement is in Burnet County, Texas.

**g. ATTORNEYS' FEES.** In the event of a lawsuit relating to this Agreement, the prevailing Party is entitled to recover reasonable attorneys' fees that are equitable and just.

**h. FORCE MAJEURE.** Except for payment obligations, neither Party will be liable to the other under this Agreement for any failure or delay in performance resulting from causes beyond the reasonable control of that Party, including without limitation acts of God, labor disputes, material shortages, governmental regulations, or communication or utility failures. The Party claiming force majeure must inform the other Party in writing promptly at the beginning and the end of the period of force majeure.

**i. SURVIVAL.** Sections 7 (Warranties), 8 (Limitation of Liability), 10 (Engineering Services) and 13 (Miscellaneous) will survive the expiration or termination, for any reason, of this Agreement.

**j. ENTIRE AGREEMENT AND AMENDMENT.** This Agreement, together with any related attachments, constitutes the entire agreement between Client and TASB and supersedes any prior written or oral agreements between them with respect to the subject matter of this Agreement. This Agreement may be modified or amended only by a written instrument executed by both Parties.

**k. COUNTERPARTS.** This Agreement may be executed by the parties in one or more counterparts, each of which will be an original and all of which will constitute one and the same instrument. A facsimile signature will be deemed an original.

**l. AUTHORITY.** This Agreement is executed with Client's full knowledge of its terms and meanings. Each individual signing below represents and warrants that he or she is duly authorized to bind his or her respective Party to the terms and conditions of this Agreement.

**m. COOPERATION.** TASB shall cooperate with and provide full project access to Client's Independent Representative, as identified in writing to TASB by Client.

**n. CHAPTER 2270 COMPLIANCE.** TASB is a nonprofit corporation and, as such, is not subject to the verification requirements of Texas Government Code Chapter 2270. However, TASB represents and warrants to the Client that TASB does not boycott Israel and will not boycott Israel during the term of this Agreement.

[Signatures on the following page]

**WHEREFORE**, the Parties have caused this Energy Services Agreement to be executed in their respective names by their duly authorized representatives. This Agreement becomes effective upon execution by both parties.

**TEXAS ASSOCIATION OF SCHOOL BOARDS, INC.**

By: \_\_\_\_\_  
Name: James B. Crow  
Title: Executive Director

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

**MARBLE FALLS INDEPENDENT SCHOOL DISTRICT**

By: \_\_\_\_\_  
(Signature of Authorized Representative)

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

Name: \_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_  
(Title/Position)

## **Exhibit A**

### **TASB Services**

TASB Services will include, but are not limited to, the following:

- Assist and participate with Entegral in progress, implementation, and review meetings with the Client
- Participate with Entegral in presentations, trainings, and workshops for Client staff, administration, and school board members
- Perform light studies and audits in accordance with Illumination Engineering Society standards
- Assist with and develop long range mechanical replacement schedules, working with information provided to TASB by Client and Entegral
- Assist with and develop mechanical inventory, working with information provided to TASB by Client and Entegral
- Perform plug load inventories for both personal and educational loads
- Assist with the development of the Client Energy Policy and Management Plan, which may include:
  - Standards of service and comfort (temperature settings/schedules)
  - Behavioral modification and related services
  - Low Cost and No Cost techniques
  - Upcoming capital improvement schedules, working with information provided to TASB by Client and Entegral
  - Upcoming bond assistance with mechanical evaluation
  - Supply side contract information for Project-related energy savings
  - Ongoing service and preventive maintenance procedures

## **EXHIBIT B PAYMENT**

Client will not directly pay TASB any amount for TASB Services performed under this Agreement. The amount to be paid to TASB by Entegral for TASB Services is included in the price of the Project which amount shall be equal to four percent (4%) of the total fee Client pays Entegral for the Project.



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

**Marble Falls ISD  
Board of Trustees  
Agenda Item Information**

Meeting Date:		
Meeting Type: Regular Meeting Special Meeting/Workshop Hearing	Agenda Placement: Public Hearing Information Items Presentation/Discussion Items Consideration Items Consent Agenda	
Date Submitted:		
Subject:		
Executive Summary:		
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:		
Submitted By:		
Board Approval Required:    Yes    No		



# AIA® Document A141™ – 2014

## Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the TWENTY-NINTH day of APRIL in the year TWO THOUSAND NINETEEN  
*(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)*

E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 972-325-1919  
Fax: 972-325-1920

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

2018 Bond HVAC and LED Project

(in phases)

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.)*

Exhibit 1 to AIA A141-2014.

§ 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.)*

Exhibit 1 to AIA A141-2014.

§ 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.)*

Exhibit 1 to AIA A141-2014.

§ 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.)*

None.

§ 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.)*

None.

§ 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.)*

Nine Million, Four Hundred Seventy-Five Thousand, Nine Hundred Eight and No/100.

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

.1 Design phase milestone dates:

To be determined by the Owner.

.2 Submission of Design-Builder Proposal:

To be determined by the Owner.

.3 Phased completion dates:

To be determined by the Owner.

.4 Substantial Completion date:

Phase 1: October 12, 2019

Phase 2: To be determined by the Owner

.5 Other milestone dates:

To be determined by the Owner

§ 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 Engineer

Kent Rothbauer, PE #82752: Phone 210-557-4561; e-mail: krothbauer@e3es.com

.2 Consultants

None.

.3 Contractors

None.

§ 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.)

Design-Builder shall coordinate with other ongoing Owner projects.

§ 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.)

Chris Allen, Ph.D.  
Superintendent  
Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654  
Phone: 830-693-4357  
Fax: 830-693-5685

§ 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.)

Bruce Jackson, AIA  
Independent Representative  
Jackson Associates

Architecture & Planning  
Phone: 512-779-8887

§ 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.)*

Bruce Jackson, AIA  
Independent Representative  
Jackson Associates  
Architecture & Planning  
Phone: 512-779-8887

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

Donald Todd  
E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 214-837-4436  
E-Mail: dtodd@e3s.com  
Fax: 972-325-1920

§ 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.

**§ 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."

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

§ 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.

§ 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.)  
*(Paragraph deleted)*

§ 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.)*

Not Applicable.

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

### § 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment – NONE

*(Paragraphs deleted)*

### § 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.

*(Paragraph 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

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

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.

Init.

### § 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

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

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 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**

init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

11

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.

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

12

§ 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.

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

13

§ 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 2, 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.

Init.

§ 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

Init.

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.

Init.

**§ 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.

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

22

§ 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

Init.

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.

Init.

## § 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.**

Init.

**§ 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.

#### **§ 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.

Init.

§ 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

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

Init.

29

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;

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

30

- 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.

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

31

### § 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

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

32

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.

Init.

AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1430597975)

34

§ 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

Init.

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.

*(Paragraphs deleted)*

**§ 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.
- .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.]

*(Paragraphs 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.

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

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10 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.

## § 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-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

## § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. 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.

§ 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.

Init.

§ 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 CHAPTER 2270, TEXAS GOVERNMENT CODE.** To the extent required by law, 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.

Init.

- 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.

**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  
Paragraph Deleted.
- .6 Other:
  - Exhibit 1: Owner’s Program Information
  - Exhibit 2: Marble Falls Independent School District’s Prevailing Wage Schedule

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

**MARBLE FALLS INDEPENDENT SCHOOL DISTRICT**

**E3 ENTEGRAL SOLUTIONS, INC.**

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

Chris Allen, Ed.D., Superintendent  
*(Printed name and title)*

\_\_\_\_\_  
*DESIGN-BUILDER (Signature)*

, authorized representative  
*(Printed name and title)*

Init.

# **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 12:30:41 ET on 04/29/2019.

PAGE 1

AGREEMENT made as of the TWENTY-NINTH day of APRIL in the year TWO THOUSAND NINETEEN

...

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

...

*(Name, legal status, address and other information)*

E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 972-325-1919  
Fax: 972-325-1920

...

2018 Bond HVAC and LED Project

...

(in phases)

PAGE 2

C SUSTAINABLE PROJECTSPREVAILING WAGE SCHEDULE

...

Exhibit 1 to AIA A141-2014.  
PAGE 3

Exhibit 1 to AIA A141-2014.

...

Exhibit 1 to AIA A141-2014.

...

None.

...

None.

...

Nine Million, Four Hundred Seventy-Five Thousand, Nine Hundred Eight and No/100.

...

To be determined by the Owner.

...

To be determined by the Owner.

...

To be determined by the Owner.

...

Phase 1: October 12, 2019  
Phase 2: To be determined by the Owner

...

To be determined by the Owner

PAGE 4

.1 Architect/Engineer

Kent Rothbauer, PE #82752; Phone 210-557-4561; e-mail: krothbauer@e3es.com

...

None.

...

None.

...

Design-Builder shall coordinate with other ongoing Owner projects.

...

Chris Allen, Ph.D.  
Superintendent  
Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654

Phone: 830-693-4357  
Fax: 830-693-5685

...

Bruce Jackson, AIA  
Independent Representative  
Jackson Associates  
Architecture & Planning  
Phone: 512-779-8887  
**PAGE 5**

Bruce Jackson, AIA  
Independent Representative  
Jackson Associates  
Architecture & Planning  
Phone: 512-779-8887

...

Donald Todd  
E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 214-837-4436  
E-Mail: dtodd@e3s.com  
Fax: 972-325-1920

...

[  ] 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.

**PAGE 6**

**§ 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.

PAGE 7

**§ 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.

...

**§ 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: monthly.)~~  
*(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.)*

...

Not Applicable.

...

**§ 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: — NONE~~

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

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

...

~~§ 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.~~

PAGE 8

~~§ 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.~~

PAGE 9

~~§ 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.

PAGE 10

§ 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.

PAGE 11

§ 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.

PAGE 13

**§ 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**

---

Additions and Deletions Report for AIA Document A141™ – 2014. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:41 ET on 04/29/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale. User Notes: (1430597975)

§ 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.

PAGE 14

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

...

§ 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.

PAGE 15

§ 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~~ 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.]

PAGE 16

§ 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.

...

§ 5.3.3 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 2, 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.

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than ~~21~~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.

PAGE 19

~~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.

PAGE 20

**§ 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.~~

PAGE 21

§ 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-Builder ~~stating their agreement upon all of the following:~~

- ~~1. The change in the Work;~~
- ~~2. The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and 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.

- ~~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-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.

PAGE 23

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

...

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

...

§ 7.2.5 ~~The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in~~

~~writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.~~ [Paragraph Deleted.]

...

~~§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder. 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.  
PAGE 24

~~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 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.~~

PAGE 25

~~§ 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.~~

...

~~§ 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.

PAGE 26

- .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;
- .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.

PAGE 27

§ 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.

PAGE 28

§ 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-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.~~

PAGE 29

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

...

§ 9.10.4 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-Builder not more than thirty-one (31) days after the Architect's execution of a final Certificate  
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.

#### § 10.1 Safety Precautions and Programs § 10.1.1 Safety Precautions and Programs PAGE 30

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.

PAGE 31

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. **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.**

...

§ 10.2.7 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~~ 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 21-3 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.

PAGE 32

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

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

...

~~§ 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.~~

...

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.

PAGE 33

- 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.

PAGE 34

§ 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.

...

§ 11.2.6 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.

PAGE 35

§ 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.

...

§ 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.

PAGE 36

- .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.

...

- 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.

PAGE 37

~~§ 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 for profits only on that portion of the Work executed, and for reasonable costs of demobilization.~~

...

~~§ 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.~~

PAGE 38

~~§ 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~~

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

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

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

~~§ 14.1.6.3 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.
- .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.

§ 14.2.1 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.

PAGE 40

~~§ 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. 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 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. [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.~~

...

~~§ 14.3.4 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.]~~

~~§ 14.4.1 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 [Not Applicable – Section Deleted.]**

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

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

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

#### **ARTICLE 15 – MISCELLANEOUS PROVISIONS**

##### **§ 15.1 Governing Law**

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

#### **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.

§ 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.

#### **PAGE 41**

**§ 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~~, ~~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~~ 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.

**PAGE 42**

**§ 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.

...

**§ 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 CHAPTER 2270, TEXAS GOVERNMENT CODE. To the extent required by law, 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.

PAGE 45

- .4 ~~AIA Document A141™ 2014, Exhibit C, Sustainable Projects, if completed~~Paragraph Deleted.
- .5 ~~AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed,~~  
or the following:

Paragraph Deleted.

...

Exhibit 1: Owner's Program Information

Exhibit 2: Marble Falls Independent School District's Prevailing Wage Schedule

...

MARBLE FALLS INDEPENDENT SCHOOL DISTRICT

E3 ENTEGRAL SOLUTIONS, INC.

\_\_\_\_\_

\_\_\_\_\_

...

Chris Allen, Ed.D., Superintendent

. authorized representative

## **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 12:30:41 ET on 04/29/2019 under Order No. 1439571919 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<sup>®</sup> Document A141<sup>™</sup> – 2014 Exhibit A

## *Design-Build Amendment*

This Amendment is incorporated into the accompanying AIA Document A141<sup>™</sup>–2014, Standard Form of Agreement Between Owner and Design-Builder dated the TWENTY-NINTH day of APRIL in the year TWO THOUSAND NINETEEN (the "Agreement")

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

### **for the following PROJECT:**

*(Name and location or address)*

2018 Bond HVAC and LED Project  
(Phase 1)

### **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)*

E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 972-325-1919  
Fax: 972-325-1920

The Owner and Design-Builder hereby amend the Agreement 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.

Init.

AIA Document A141<sup>™</sup> – 2014 Exhibit A. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:09 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(895771699)

**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 FOUR MILLION NINE HUNDRED SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-NINE AND NO/100 DOLLARS (\$4,979,889.00), subject to authorized adjustments as provided in the Design-Build Documents. The Stipulated Sum is comprised of the following elements: (1) High School HVAC: \$3,644,473.00; (2) High School Controls: \$425,027.00; (3) Highland Lakes HVAC: \$726,432.00; (4) Highland Lakes Controls: \$96,391.00; (5) Spicewood HVC: \$83,177.00; and (6) Spicewood Controls: \$4,389.00.

§ 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.)*

None.

§ 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)
None.		

**§ 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.)*

Not Applicable.

**§ 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.

**§ A.1.4.2** The Design-Builder's  
*(Paragraphs deleted)*  
Fee shall be Not Applicable.

**§ 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 Not Applicable. (\$Not Applicable.), 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.)*

Not Applicable.

**§ 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.)*

Not Applicable.

**§ 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)
Not Applicable.		

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

Not Applicable.

**§ 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.

Init.

§ 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 FIVE percent (5%) 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 FIVE percent (5%);
- .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

Init.

*(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.)*

None.

**§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee – NOT APPLICABLE.**

**§ 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 – NOT APPLICABLE**

**§ 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 ONE HUNDRED AND EIGHTY (180) 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
Not Applicable.	

, 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.)*

Init.

**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
Exhibit 2 to AIA A141-2014 for the Project	Marble Falls Independent School District Prevailing Wage Schedule (With Fringes)		3

**§ A.3.1.2** The Specifications:

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

Scope of Work/Project Description at Exhibit 1 to AIA A141-2014 Exhibit A (19 pages).

Section	Title	Date	Pages
---------	-------	------	-------

**§ A.3.1.3** The Drawings:

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

Scope of Work/Project Description at Exhibit 1 to AIA A141-2014 Exhibit A (19 pages).

Number	Title	Date
--------	-------	------

**§ 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
None.		

*Other identifying information:*

None.

**§ A.3.1.5** Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

.1 Allowances

None.

.2 Contingencies

None.

**§ A.3.1.6** Design-Builder's assumptions and clarifications:

Included in the Scope of Work/Project Description at Exhibit 1 to AIA A141-2014 Exhibit A (19 pages).

**§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:**

None.

**§ 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:**

Fifty percent (50%), seventy-five percent (75%), and one hundred percent (100%) drawings and specifications shall be submitted for Owner and Independent Representative Review and approval.

**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**

None.

**.2 Project Manager**

Nathan Snell: Phone: 469-744-0227; e-mail: nsnell@e3es.com

**.3 Others**

Donald Todd: Phone: 214-837-4436; e-mail: dtodd@e3es.com

**§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:**

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

Not Applicable.

**ARTICLE A.5 COST OF THE WORK – NOT APPLICABLE (THIS IS A STIPULATED SUM CONTRACT)**

**§ A.5.1 Cost To Be Reimbursed as Part of the Contract**

**§ A.5.1.1 Labor Costs**

**§ A.5.1.1.1 [Paragraph Deleted.]**

**§ A.5.1.1.2**

*(Paragraphs deleted)*

[Paragraph Deleted.]

*(Table deleted)*

**§ A.5.1.1.3 [Paragraph Deleted.]**

**§ A.5.1.1.4 [Paragraph Deleted.]**

**§ A.5.1.1.5 [Paragraph Deleted.]**

**§ A.5.1.2 Contract Costs. [Paragraph Deleted.]**

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ A.5.1.3.1 [Paragraph Deleted.]**

**§ A.5.1.3.2 [Paragraph Deleted.]**

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ A.5.1.4.1 [Paragraph Deleted.]**

Init.

| § 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 [Paragraph Deleted.]

| **§ A.5.1.5 Miscellaneous Costs**

| § A.5.1.5.1 [Paragraph Deleted.]

| § A.5.1.5.2 [Paragraph Deleted.]

| § A.5.1.5.3 [Paragraph Deleted.]

| § A.5.1.5.4 [Paragraph Deleted.]

| § A.5.1.5.5 [Paragraph Deleted.] .

| § 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 [Paragraph Deleted.]

| § 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 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;

Init.

- .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.

Init.

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

**MARBLE FALLS INDEPENDENT SCHOOL  
DISTRICT**

**E3 ENTEGRAL SOLUTIONS, INC.**

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

\_\_\_\_\_  
Chris Allen, Ed.D., Superintendent  
*(Printed name and title)*

\_\_\_\_\_  
**DESIGN-BUILDER** *(Signature)*

\_\_\_\_\_  
, authorized representative  
*(Printed name and title)*

Init.

/

## 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 12:30:09 ET on 04/29/2019.

### PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the TWENTY-NINTH day of APRIL in the year TWO THOUSAND NINETEEN (the "Agreement")

...

2018 Bond HVAC and LED Project  
(Phase 1)

...

*(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

...

E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 972-325-1919  
Fax: 972-325-1920

### PAGE 2

[  ] Stipulated Sum, in accordance with Section A.1.2 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

...

**§ A.1.2.1** The Stipulated Sum shall be (~~\$—~~), FOUR MILLION NINE HUNDRED SEVENTY-NINE THOUSAND EIGHT HUNDRED EIGHTY-NINE AND NO/100 DOLLARS (\$4,979,889.00), subject to authorized adjustments as provided in the Design-Build Documents. The Stipulated Sum is comprised of the following elements: (1): High School HVAC: \$3,644,473.00; (2) High School Controls: \$425,027.00; (3) Highland Lakes HVAC: \$726,432.00;

---

Additions and Deletions Report for AIA Document A141™ – 2014 Exhibit A. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 12:30:09 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(895771699)

(4) Highland Lakes Controls: \$96,391.00; (5) Spicewood HVC: \$83,177.00; and (6) Spicewood Controls: \$4,389.00.

...

None.

...

None.

PAGE 3

Not Applicable.

~~§ 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 Not Applicable.

...

§ 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 (~~\$—~~), Not Applicable. (~~\$Not Applicable.~~) 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.

...

Not Applicable.

...

Not Applicable.

...

Not Applicable.

...

Not Applicable.

...

§ 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:~~month.

PAGE 4

§ 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.

...

- .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 (—%)~~ FIVE percent (5%) 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 (—%)~~ FIVE percent (5%);

PAGE 5

None.

**§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee – NOT APPLICABLE.**

...

**§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price – NOT APPLICABLE**  
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;

...

**§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ~~(—)~~ ONE HUNDRED AND EIGHTY (180) days from the date of this Amendment, or as follows:**

...

Not Applicable.

PAGE 7

Exhibit 2 to AIA  
A141-2014 for the  
Project

Marble Falls  
Independent School  
District Prevailing Wage  
Schedule (With Fringes)

3

...

Scope of Work/Project Description at Exhibit 1 to AIA A141-2014 Exhibit A (19 pages).

...

Scope of Work/Project Description at Exhibit 1 to AIA A141-2014 Exhibit A (19 pages).

...

None.

...

None.

...

None.

...

None.

PAGE 8

Included in the Scope of Work/Project Description at Exhibit 1 to AIA A141-2014 Exhibit A (19 pages).

...

None.

...

Fifty percent (50%), seventy-five percent (75%), and one hundred percent (100%) drawings and specifications shall be submitted for Owner and Independent Representative Review and approval.

...

None.

...

Nathan Snell: Phone: 469-744-0227; e-mail: nsnell@e3es.com

...

Donald Todd: Phone: 214-837-4436; e-mail: dtodd@e3es.com

...

Not Applicable.

**ARTICLE A.5 COST OF THE WORK – NOT APPLICABLE (THIS IS A STIPULATED SUM CONTRACT)**

...

~~§ 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. [Paragraph Deleted.]~~

~~§ 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.]~~

<b>Person Included</b>	<b>Status (full-time/part-time)</b>	<b>Rate (\$0.00)</b>	<b>Rate (unit of time)</b>
------------------------	-------------------------------------	----------------------	----------------------------

~~§ 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.5.1.1.4 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. [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.]~~

~~§ 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. [Paragraph Deleted.]~~

...

~~§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction. [Paragraph Deleted.]~~

~~§ 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. [Paragraph Deleted.]~~

...

~~§ 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.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval. [Paragraph Deleted.]~~

PAGE 9

~~§ 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. [Paragraph Deleted.]~~

~~§ 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. [Paragraph Deleted.]~~

~~§ 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. [Paragraph Deleted.]~~

~~§ 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.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property. [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.

PAGE 11

MARBLE FALLS INDEPENDENT SCHOOL  
DISTRICT

E3 ENTEGRAL SOLUTIONS, INC.

\_\_\_\_\_

\_\_\_\_\_

...

Chris Allen, Ed.D., Superintendent

, authorized representative

## **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 12:30:09 ET on 04/29/2019 under Order No. 1439571919 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)*



## EXHIBIT 1: SCOPE OF WORK/PROJECT DESCRIPTION

### HEATING, VENTILATION & AIR CONDITIONING (HVAC) SYSTEM REPLACEMENTS

The goal of the project is to replace Marble Falls ISD's heating, ventilating, and air conditioning (HVAC) equipment that is more than 10 years old, in order to eliminate the units that still use R-22 refrigerant and to improve energy efficiency. This phase of the project deals specifically with the High School, Highland Lakes Elementary School, and the cafetorium at Spicewood Elementary School. E3 will remove the existing HVAC equipment, and furnish and install new systems on a like-for-like basis that meet or exceed the 2015 International Energy Conservation Code.

#### Marble Falls High School

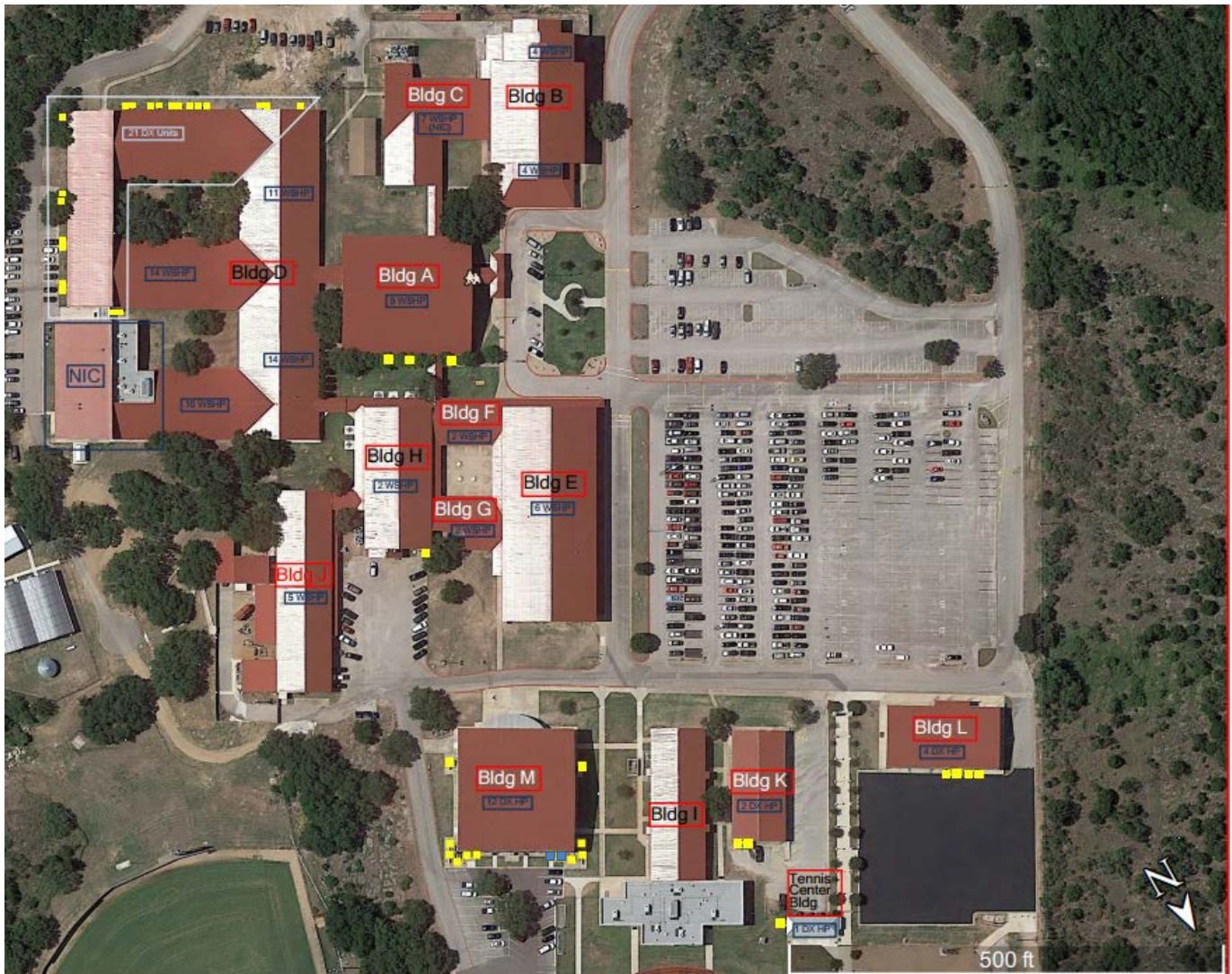


Figure 1: High School Campus



**Building A: Administration/Library**

E3 will provide and install nine (9) new water-source heat pumps (WSHP) and new supply and return fans serving the three (3) outside air (OA) heat exchanger (HX) as outlined in Tables 1 and 2. The HXs will be cleaned and re-used. As shown in Figure 2, the District replaced three of the original WSHPs serving the administration area (unit A2) and the library (units A4 and A5) with air-cooled direct expansion heat pumps (DXHP). E3 will not retrofit these units but will add them to the new building automation system (BAS) to be described later in this Schedule.

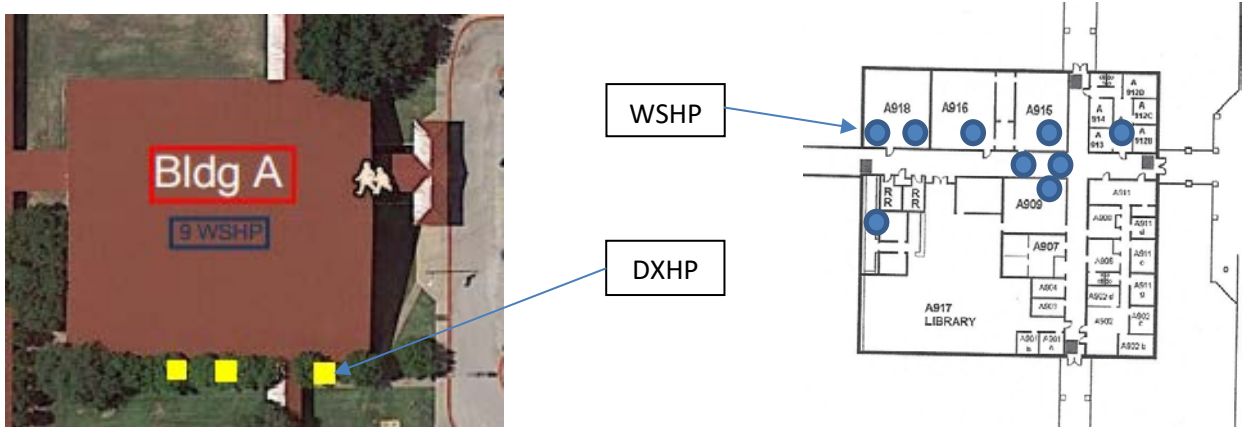


Figure 2: Building A - Administration/Library

Table 1: Building A HVAC Equipment

Location	Number of WSHP	Total Cooling (MBH)	Heating Capacity (MBH)
Building A	9	315.1	365.8

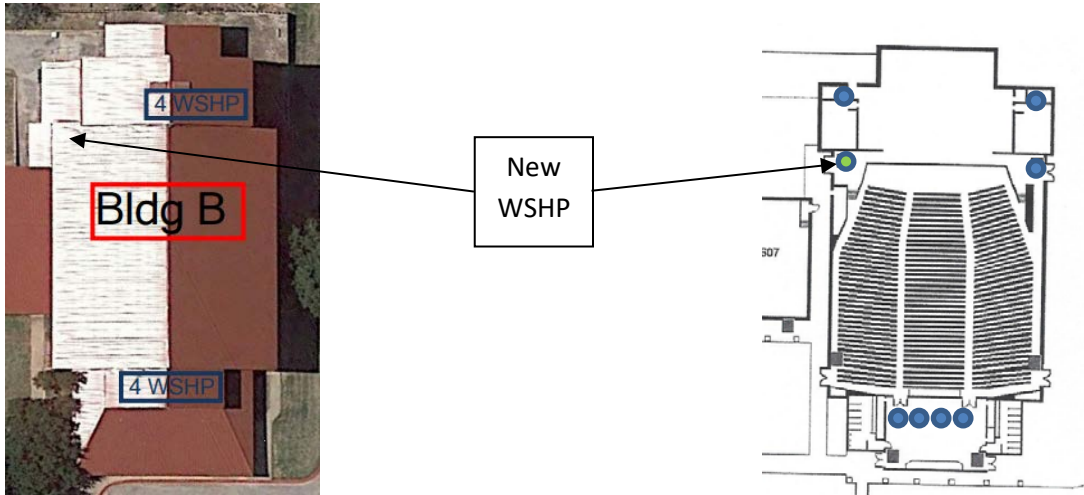
Table 2: Building A Outside Air Heat Exchangers

HX	Supply CFM	Return CFM
A1	1890	1870
A2	250	250
A3	370	370



**Building B: Auditorium**

E3 will provide and install seven (7) new water-source heat pumps (WSHP) as outlined in Tables 3 and Figure 3. The District recently replaced one of the original WSHPs serving the west side of the stage. E3 will not replace the unit but will be connect it to the new BAS to be described later in this Schedule.



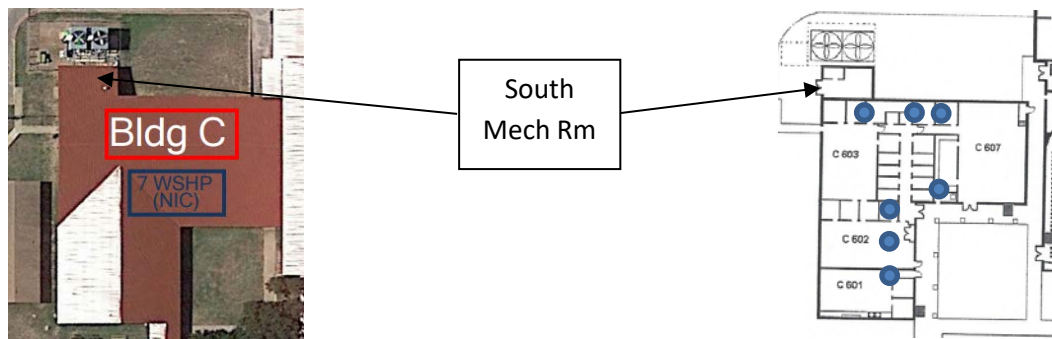
**Figure 3: Building B - Auditorium**

**Table 3: Building B HVAC Equipment**

Location	Number of Units	Total Cooling (MBH)	Heating Capacity (MBH)
Building B	7	1,198.3	1,494.0

**Building C: Drama, Art, Choir**

Due to a pending capital project, the WSHP in Building C are excluded from this project. E3 will replace the condenser water pump as described in a later section.

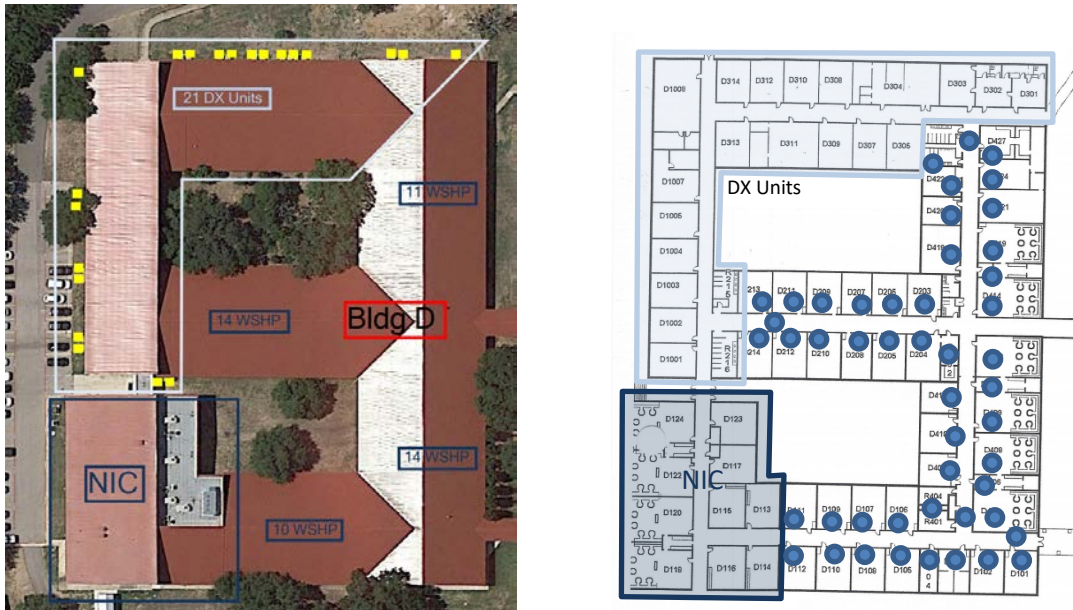


**Figure 4: Building C – Drama, Art, Choir**



**Building D: Classrooms**

E3 will provide and install 49 new water-source heat pumps (WSHP), 21 split DX heat pumps, and new supply and return fans serving the six (6) OA HXs as outlined in Tables 4 and 5. The HXs will be cleaned and re-used. The capacity of the OA HRVs will be increased to provide the required quantity of OA per ASHRAE Standard 62.1-2015. The northeast corner of the building is not included in this contract as the units were installed in 2009.



**Figure 5: Building D - Classrooms**

**Table 4: Building D HVAC Equipment**

Type	Number of Units	Total Cooling (MBH)	Heating Capacity (MBH)
WSHP	49	1,523.0	1,728.2
DXHP	21	1,140.0	1,293.6

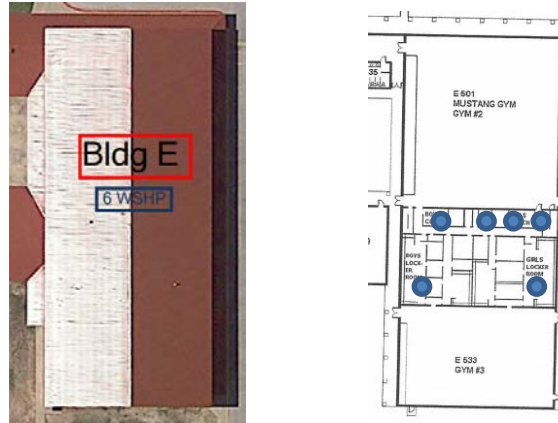
**Table 5: Building D OA HXs**

HX	Supply CFM	Return CFM
C1	1,600	1,600
C2	1,600	1,600
C3	1,600	1,600
C4	1,600	1,600
C5	1,800	1,800
C6	1,500	1,500



**Building E: Mustang Gymnasium**

E3 will provide and install six (6) new water-source heat pumps (WSHP) as outlined in Table 6. All WSHP are located on the mezzanine above the locker rooms.



**Figure 6: Building E – Mustang Gymnasium**

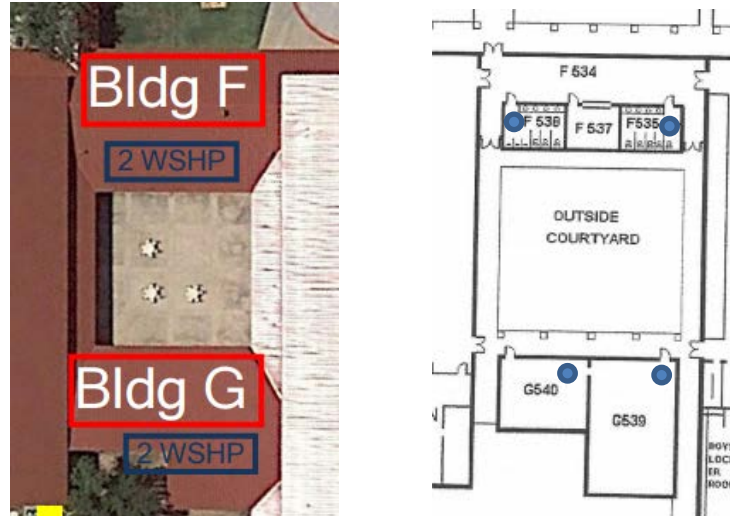
**Table 6: Building E HVAC Equipment**

Location	Number of Units	Total Cooling (MBH)	Heating Capacity (MBH)
Building E	6	1,054.9	1,316.2



**Buildings F and G: Lobby/Concessions/Multi-Purpose**

E3 will provide and install four (4) new water-source heat pumps (WSHP) and new supply and return fans serving the one (1) OA HX as outlined in Tables 7 and 8. The HX will be cleaned and re-used.



**Figure 7: Buildings F and G – Lobby/Concessions and Multi-Purpose**

**Table 7: Buildings F and G HVAC Equipment**

Location	Number of Units	Total Cooling (MBH)	Heating Capacity (MBH)
Buildings F and G	4	197.6	238.6

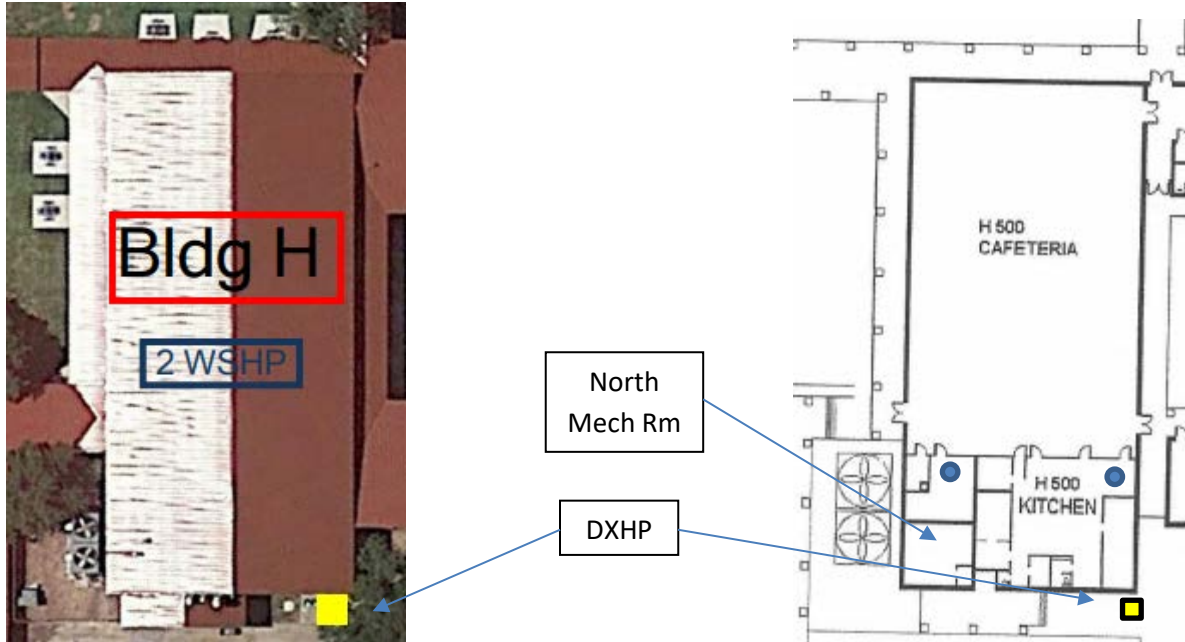
**Table 8: Building G OA HX**

HX	Supply CFM	Return CFM
L1	1,700	1,700



**Building H: Cafeteria/Kitchen**

E3 will provide and install two (2) new water-source heat pumps (WSHP) and one (1) split DX heat pumps as outlined in Table 9.



**Figure 8: Building H – Cafeteria/Kitchen**

**Table 9: Building H HVAC Equipment**

Type	Number of Units	Total Cooling (MBH)	Heating Capacity (MBH)
WSHP	2	496	630
DXHP	1	1,200	1,524



**Building J: Vocational**

E3 will provide and install five (5) new water-source heat pumps and new supply and return fans serving the two (2) OA HXs as outlined in Table 10 and 11. The HXs will be cleaned and re-used.



**Figure 9: Building J - Vocational**

**Table 10: Building J HVAC Equipment**

Location	Number of Units	Total Cooling (MBH)	Heating Capacity (MBH)
Building J	5	169.6	197.5

**Table 11: Building J OA HXs**

HX	Supply CFM	Return CFM
V1	400	400
V2	650	650



**Building K: Weight Room**

E3 will provide and install two (2) split DX units and one (1) exhaust fan as outlined in Table 12 and 13. In addition, E3 will seal around partition wall between the storage area and the weight room and provide a return air grille and ductwork for the units. A new air-side economizer is to be installed on the new return air ductwork. On the opposite end of the building, E3 will provide and install a new exhaust fan.



**Figure 10: Building K – Weight Room**

**Table 12: Building K HVAC Equipment**

Location	Number of Units	Total Cooling (Tons)
Building K	2	20

**Table 13: Building K Exhaust Fan**

Location	Number of Units	Total CFM
Building K	1	8,000



**Building L: Band Hall**

E3 will provide and install four (4) split DX units as outlined in Table 14.



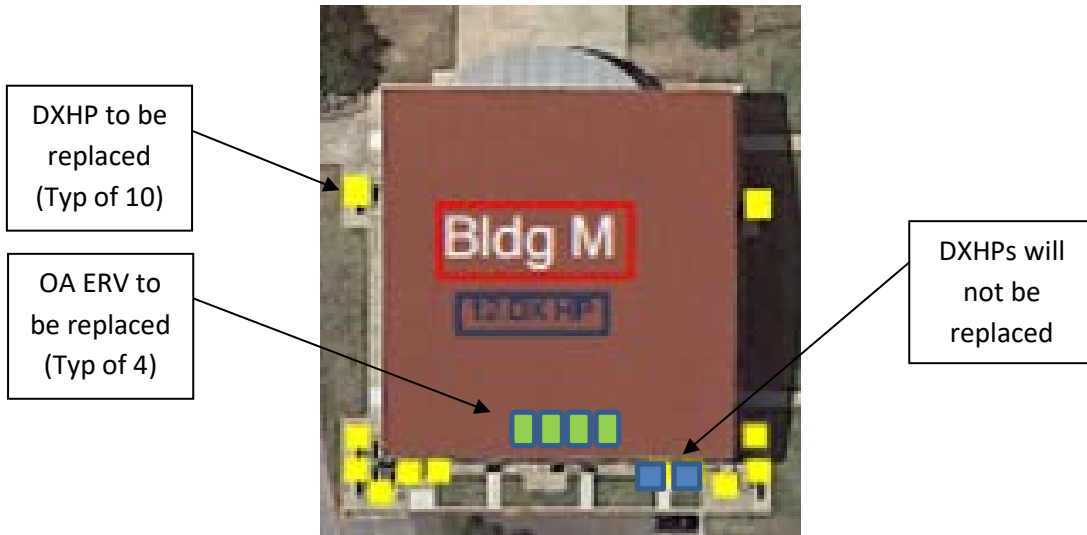
**Figure 11: Building L – Band Hall**

**Table 14: Building L HVAC Equipment**

Location	Number of Units	Total Cooling (Tons)
Building K	4	39

**Building M: Max Gym**

E3 will provide and install ten (10) split DX units and four (4) OA HXs as outlined in Table 15 and 16. Two (2) of the building’s 12 DXHPs (units 9 and 10) have been replaced by the District, and will not be retrofitted as part of this project.



**Figure 12: Building M – Max Gym**

**Table 15: Building M HVAC Equipment**

Location	Number of Units	Total Cooling (Tons)
Building M	10	107

**Table 16: Building M Outside Air Heat Exchangers**

HX	Supply CFM	Return CFM
1	4,500	2,885
2	4,500	4,500
3	4,500	4,500
4	4,500	2,885



### Tennis Center Building

E3 will provide and install one (1) split DX heat pumps as outlined in Table 17.



Figure 13: Tennis Center Building

Table 17: Tennis Center Building HVAC Equipment

Location	Number of Units	Total Cooling (Tons)
Building K	1	1.5



South Condensing Water Loop

E3 will provide and install the following new equipment on the south condensing water loop:

- Four (4) new condensing water pumps with associated variable speed drives for the building loops
- One (1) new condensing boiler with associated circulating pump
- Eight (8) differential pressure transmitters on the condensing water loop
- Four (4) condenser water loop bypass lines and valves for minimum flow on the building loops
- TAB of condensing water loop

North Condensing Water Loop

E3 will provide and install the following new equipment on the north condensing water loop:

- Four (4) new condensing water pumps with associated variable speed drives for the building loops
- One (1) new condensing boiler with associated circulating pump
- Eight (8) differential pressure transmitters on the condensing water loop
- Four (4) condenser water loop bypass lines and valves for minimum flow on the building loops
- One (1) Filter assembly between condenser water supply and return lines (bypassing the cooling tower)
- TAB of condensing water loop



## Highland Lakes Elementary School

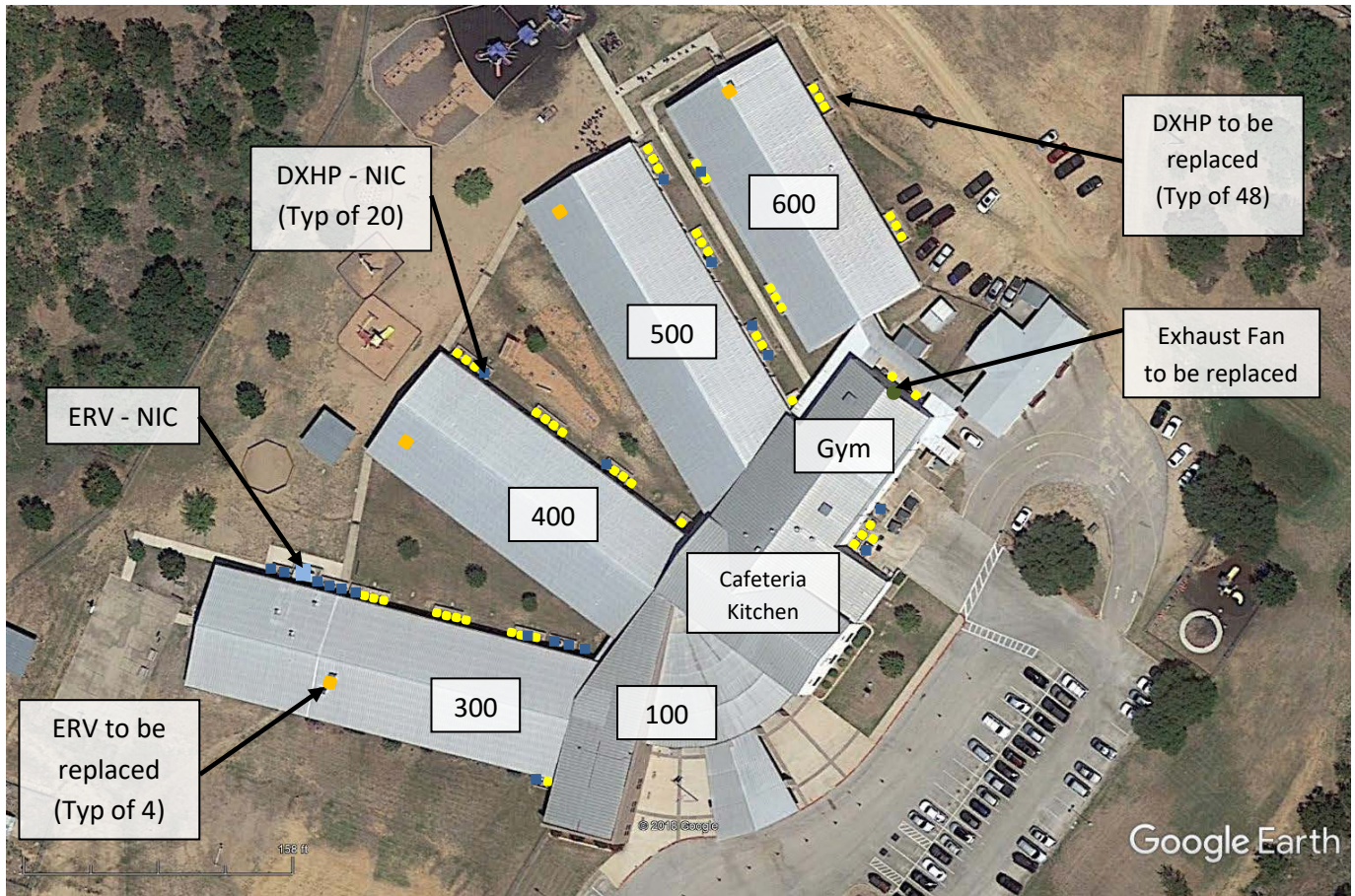


Figure 14: Highland Lakes Elementary School

### Highland Lakes Elementary School

E3 will provide and install forty-eight (48) split DX heat pumps and four (4) OA energy recovery ventilators (ERVs) as outlined in Table 18 thru 20 and shown in Figure 14. The gymnasium DX units will be redesigned from having four (4) units to only (2) units and new duct sox will be installed for air distribution running the length of the gym. The existing ceiling mounted supply air fans for the gymnasium will be removed. One of the penetrations will be capped and sealed while the other will be used to provide outside air to the new DX units with economizer mode capabilities. In addition, a new exhaust fan shall be installed in the gymnasium. The ERVs serving the 300, 400, and 500 Wings shall be relocated from above the ceiling in a classroom to the hallway ceiling. Due to a pending capital project, the units serving the administration area (100 Wing) are not included in this contract (NIC).



**Table 18: Highland Lakes ES HVAC Equipment**

Location	Units Replaced	Units NIC	Tonnage Replaced
100 Wing (Admin/Library)	1	4	6.5
200 Wing (Cafeteria/Kitchen/Gym) *	6	2	30
300 Wing (Classrooms)	10	2	30
300 Wing Addition (Classrooms)	0	5	0
400 Wing (Classrooms)	11	2	33
500 Wing (Classrooms)	9	4	26.5
600 Wing (Classrooms)	11	1	36

Table Note: \* Four (4) units in Gym will be replaced by two (2) larger units. Total existing tonnage will be maintained.

**Table 19: Highland Lakes ES Outside Air Energy Recovery Ventilator**

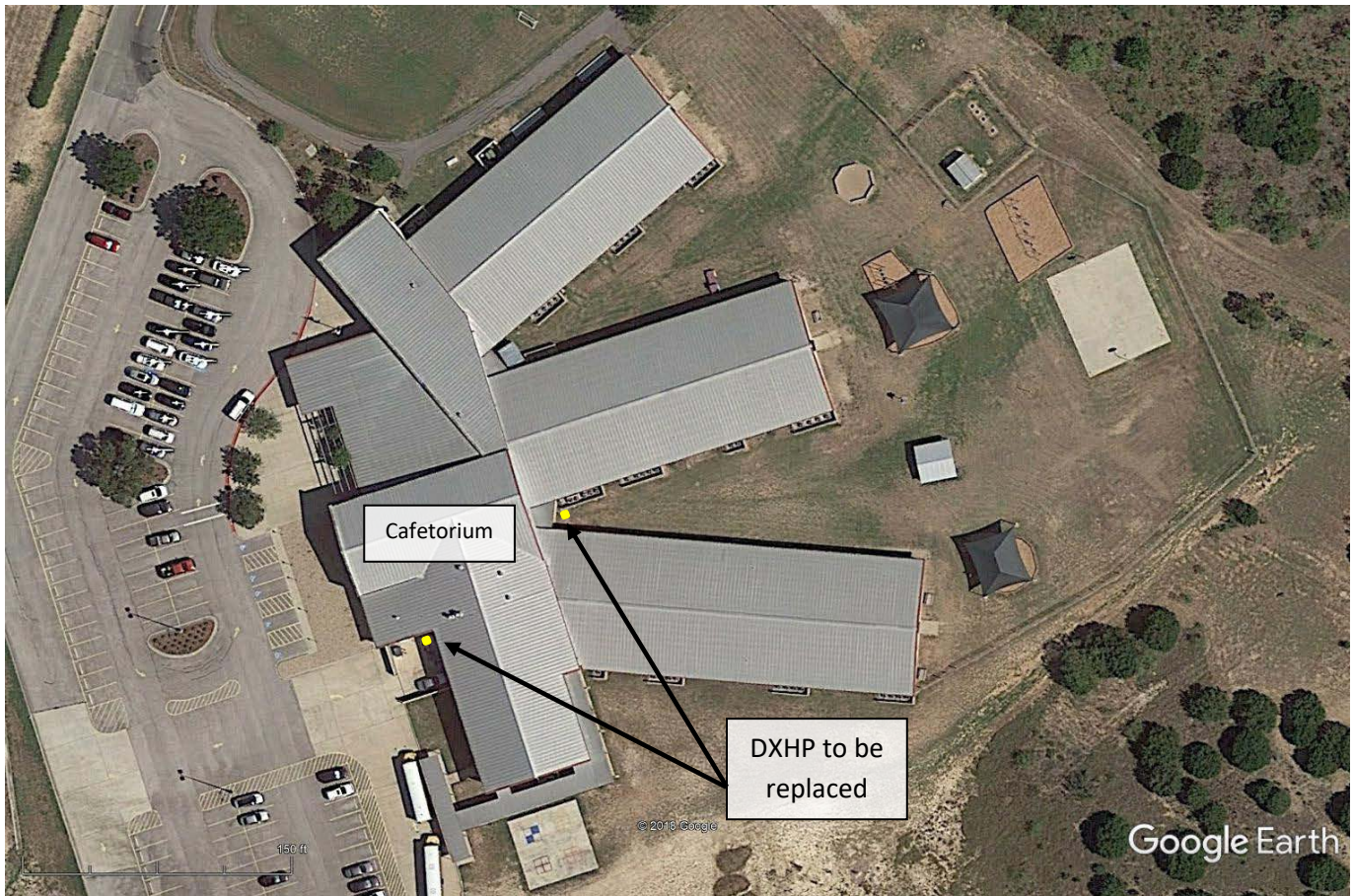
Location	OA CFM
300 Wing	3,000
400 Wing	3,000
500 Wing	3,250
600 Wing	4,200

**Table 20: Highland Lakes ES Exhaust Fan**

Location	Number of Units	Total CFM
Gymnasium	1	8,000



## Spicewood Elementary School



### Spicewood Elementary School – Cafetorium

E3 will provide and install two (2) split DX heat pumps as outlined in Table 21.

**Table 21: Spicewood ES HVAC Equipment**

Location	Number of Units	Total Cooling (Tons)
Cafetorium	2	28



**Clarifications and Exclusions:**

- Asbestos abatement is excluded if required
- Quantities and sizes of HVAC equipment are subject to final engineering
- All portable buildings are excluded



## BUILDING AUTOMATION SYSTEM (BAS) UPGRADES

### Comprehensive Project Description

E3 will furnish and install all necessary components to achieve a new control system for the Marble Falls ISD campuses listed below. The system shall be the Delta Direct Digital Control (DDC) system and will replace all existing stand-alone control systems as shown in Table 22. This scope includes the demolition of existing control systems, installation of new control systems, low voltage electrical terminations, computer graphics, computer programming, functionality testing, and Marble Falls ISD maintenance staff training. E3 will properly dispose of all mercury-containing thermostats.

- Marble Falls High School
  - The HVAC equipment listed in Table 22 will be controlled by the new Delta Building Automation System
  - Excluding equipment currently controlled by Alerton controls (Max Gym, Field house, SE Classrooms) or on the athletic facilities (Press Box, Home/Visitor Concessions, Tennis Center, and Ticket Booths)

**Table 22: High School BAS-controlled Equipment**

BLDG	WSHP	DXHP	HRV	Boiler	Cooling Tower	Pump VFD	Bypass Loop	DP Sensor
A	9	3	3					
B	8	0	0					
C	7	0	1					
D	49	21	6					
E	6							
FG	4		1					
H	2	1						
I	0	0	0					
J	5		1					
K		2						
L		4						
M		12	4					
Tennis		1						
South MR				1	2	4	4	8
North MR				1	2	4	4	8
<b>Total</b>	<b>90</b>	<b>44</b>	<b>16</b>	<b>2</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>16</b>



E3 will disconnect and reconnect the existing Delta DDC system at the following locations for all HVAC equipment that is being replaced as part of the mechanical retrofit project. Room temperature sensors will be calibrated, and control systems recommissioned.

- Highland Lakes Elementary School
  - 48 DX Units
  - 4 ERVs
  - 1 Exhaust Fan
  - 1 Air-Side Economizer
- Spicewood Elementary School
  - 2 DX Units

The following HVAC system types and configurations shall be supported, as applicable to the above facilities, by the new system.

- |  |                                       |
|--|---------------------------------------|
| ▪ Water Source Heat Pumps and associated valves      | ▪ Split Systems                       |
| ▪ Variable Volume Condenser Water Pumps              | ▪ Fan Coil Units                      |
| ▪ Condensing Boilers and associated pumps            | ▪ Heat Exchangers and associated fans |
| ▪ Cooling Towers and associated pumps                | ▪ Energy Recovery Ventilators         |
| ▪ Hot Water Boilers with associated pumps and valves | ▪ Exhaust fans                        |

**Clarifications and Exclusions:**

- Fire dampers and fire-smoke dampers are excluded
- Air testing and balancing services are excluded
- Kitchen equipment, unless otherwise specified above, is excluded
- All portable buildings are excluded

**MISCELLANEOUS PROVISIONS**

- The entire project comes with a one year labor warranty. All HVAC and building automation components are warrantied for one year, with the exception of HVAC compressors. HVAC compressors carry a one year parts and labor warranty and an additional 4 years of warranty for parts only.
- 24 hours of on-site DDC controls training will be provided.
- Up to 8 hours of HVAC training will be provided for each equipment type.

 **AIA**® Document A141™ – 2014 Exhibit B

**Insurance and Bonds**

**for the following PROJECT:**

*(Name and location or address)*

2018 Bond HVAC and LED Project  
(Phase 1)

**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)*

E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 972-325-1919  
Fax: 972-325-1920

**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 TWENTH-NINTH day of APRIL in the year TWO THOUSAND AND NINETEEN.

*(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.

## 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 Contractual Liability	(Same limits as above) (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)*

init.

**§ 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.

#### § 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 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.]

Init.

*(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:

**MARBLE FALLS INDEPENDENT SCHOOL  
DISTRICT**

**E3 ENTEGRAL SOLUTIONS, INC.**

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

\_\_\_\_\_  
Chris Allen, Ed.D., Superintendent  
*(Printed name and title)*

\_\_\_\_\_  
**DESIGN-BUILDER** *(Signature)*

\_\_\_\_\_  
, authorized representative  
*(Printed name and title)*

init.

# 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 09:47:37 ET on 04/29/2019.

## PAGE 1

### 2018 Bond HVAC and LED Project (Phase 1)

...

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

...

*(Name, legal status and address)*

E3 Entegral Solutions, Inc.  
2040 Highland Village Road, Suite 100  
Highland Village, Texas 75077  
Phone: 972-325-1919  
Fax: 972-325-1920

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the TWENTH-NINTH day of APRIL in the year TWO THOUSAND AND NINETEEN.

...

## **B.2 ~~DESIGN-BUILDER'S~~ DESIGN-BUILDER'S INSURANCE AND BONDS**

### **PAGE 2**

### **~~ARTICLE B.2 – DESIGN BUILDER'S INSURANCE AND BONDS~~** **ARTICLE B.2 DESIGN-BUILDER'S INSURANCE AND BONDS**

...

§ 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.
- ~~.4 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 &amp; 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**

Additions and Deletions Report for AIA Document A141™ – 2014 Exhibit B. Copyright © 2004 and 2014 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 09:47:37 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1850560081)

~~§ 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 polices. 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.

PAGE 7

§ 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-Army. 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.

PAGE 8

MARBLE FALLS INDEPENDENT SCHOOL  
DISTRICT

E3 ENTEGRAL SOLUTIONS, INC.

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

Chris Allen, Ed.D., Superintendent  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*DESIGN-BUILDER (Signature)*

\_\_\_\_\_, authorized representative  
\_\_\_\_\_  
*(Printed name and title)*

## EXHIBIT 1 to AIA A141-2014

### Marble Falls High School

#### HVAC

Marble Falls High School was originally constructed in 1986. There have been several add on buildings that are not directly attached to the main building. The Campus is approximately 270,000 square feet. The main building has air conditioning that has manual thermostats. A few areas are controlled using a native BACNET system. The campus area A/C's have Command Air units that range from 2 ½ ton to 15 ton water source heat pumps. There are 94 units that get their water from a two-closed loop system. The North Loop consists of the Cafeteria, 2 Gyms, Foyer, and a CTE classroom and shops. The South Loop consists of Main classrooms, Auditorium, Administration and Library. The North Loop is water heated and cooled using an Evapco closed circuit cooler. The system has a PVI boiler to heat the water. The system is currently controlled manually onsite, with manual timers. The Evapco closed system units are not being replaced, however the controls or daily schedule will be in the scope of work for energy management purposes.

The High School Band Hall, weight room, Fieldhouse and Max Gym have DX split systems; some have gas heat and others are heat pump. The newer portion of the school, built in 2008, has split systems with a mix of gas and electric heat and heat pump. There are 57 DX split units for the mentioned areas. The Band and Weight room have the oldest units. They were installed in 2000 while the Max Gym was a 2002 installation. The addition of the classrooms were over two different building periods. One was from 2002 and the other in 2008. The District will select the older unit replacement first based on installation and educational usage of the area.

#### LED – Fixtures Sufficient For the Following:

Building A consists of 52 rooms to include Administrative offices, restrooms, and storage.

Building B consists of 16 rooms to include auditorium, restrooms, dressing rooms and storage.

Building C consists of 30 rooms to include classrooms, restrooms and storage.

Building D consists of 91 rooms to include mostly classrooms, restrooms and storage.

Building E consists of 24 rooms to include gyms, locker rooms, offices, laundry room and storage.

Building F consists of 5 rooms to include office, restrooms and storage.

Building G consists of 3 rooms to include classrooms and storage.

Building H consists of 14 rooms to include kitchen, cafeteria, offices, restrooms and storage.

Building I consist of 45 rooms to include offices, laundry room, locker rooms, showers, restrooms and storage.

Building J consists of 29 rooms to include wood shop, weld shop, green house, store front, Ag barn, kennel, restrooms, offices and storage.

Building K consists of 14 rooms to include restrooms, locker rooms, concession, and storage.

Building L consists of 12 rooms to include office, restroom storage and classrooms.

Building M consists of 18 rooms to include offices, gym, locker rooms, and storage.

Building N consists of 10 rooms to include restrooms, storage, elevator and viewing rooms.

## Marble Falls Middle School

### HVAC

The Middle School was remodelled to contain all classrooms under a main roof. There is 174,000 square feet of building. Two buildings are set to one side commonly known as the 6<sup>th</sup> grade classrooms. There are 20 units in this area and vary in age from 1990 to 2017 and are single classroom use at 3-ton DX split units. The make-up air system is not to standards and a design to improve make up air will be needed here. The 7<sup>th</sup> grade educational area has 23 units, 14 of which were installed in 1998. The others are from 2008 installation. The 1998 units will be the first group to be replaced. The classroom units are nominally 3-ton units with the Cafeteria, Kitchen, Library and Storage varying based on square footage. The units for the Gym along with the make up air units will require recommissioning.

### LED – Fixtures Sufficient For the Following:

Building A consists of 111 rooms to include offices, classrooms, storage and restrooms.

Building B consists of 43 rooms to include Administrative offices, library, cafeteria, kitchen, other offices, classrooms, restrooms, and storage.

Building C consists of 15 rooms to include offices, classrooms, restrooms and storage.

Building D consists of 13 rooms to include work room, classrooms, restrooms and storage.

Building E consists of 46 rooms to include gyms, locker rooms, classrooms and storage.

## Marble Falls Elementary School

### HVAC

The Elementary School is 100,848 square feet along with a 2 story Granite Building. The Granite building was built in 1891 and has numerous upgrades. The latest upgrade was four 6-ton gas heat A/C units that will need replacement. The Pink or E building was remodelled in 1991 with 5-ton units for Art and Music rooms. There are 14 classroom units that have 3-ton units. There is a D building that has DX split units for a total of 17 units installed in 1998. A few of these units are newer due to recent compressor failures. Marble Falls is asking for the D and E buildings to have our Energy Management System installed as part of the scope of work. This school is using Climatec BAS to control schedules and temperatures. The remainder of the classroom and office space was installed in 2008 during construction of that portion of the build. There are 3 INOVENT units that will also need to be recommissioned.

### LED – Fixtures Sufficient For the Following:

Building A and B consist of 42 rooms to include offices, classrooms, storage and restrooms.

Building C consists of 41 rooms to include classrooms, restrooms and storage.

Building D consists of 41 rooms to include classrooms, cafeteria, kitchen, restrooms and storage.

## Highland Lakes Elementary

### HVAC

This school is 83,000 square feet and was constructed in 1998 and 2002. The original DX units all electric will require change out. There are a total of 51 units for change out: (1) 3-ton units for classrooms, (2) 15-ton units for the Cafeteria, and, (3) 7-ton units for the Library. The 600 hall was built in 2002 and has 12 units, which will also need to be removed and replaced. HLE has an Energy Management System installed and working for all units. This school will have some other construction and the District will phase in the replacement later at the main campus. The fresh air make-up units will require recommissioning or removal.

### LED – Fixtures Sufficient For the Following:

300 Hall consists of 23 rooms to include classrooms and restrooms, and a small storage area.

400 Hall consists of 17 rooms to include classrooms, restrooms, book room and restrooms.

500 Hall consists of 20 rooms to include classrooms, 8 individual restrooms and a custodial closet.

600 Hall consists of 16 rooms to include classrooms, restrooms, custodial closet and storage. Administration, Cafeteria, Library, and Gymnasium are included in this campus.

## Spicewood Elementary

### HVAC

Spicewood Elementary was constructed in 2002 and has an Energy Management System installed. It is a 61,062 square foot building. There is a Library, Cafeteria, Office and classrooms. There are 37 classroom units. Six of the HVAC units are not 3 ton. The Library has two 7-ton units, as does the Gym. It is our preference to take care of the oldest units first

### LED – Fixtures Sufficient For the Following:

300 Hall consists of 18 rooms to include classrooms, and restrooms.

400 Hall consists of 18 rooms to include classrooms, restrooms, and storage.

500 Hall consists of 20 rooms to include classrooms, restroom, and storage.

Administration, Cafeteria, Library and Gymnasium are also included.

## Administration, Curriculum and Falls

### HVAC

These areas encompass 60,982 square feet of space that was remodelled in 2008. The Falls portion was not completely replaced. There are 14 units which are heat pump with electric heat. These units are 3 ton in size. There is an Energy Management System in place and working in all the mentioned areas under this heading. The administration area has 1 make up air unit that will require recommissioning for efficiency.

### LED – Fixtures Sufficient For the Following:

None.

## Technology

### HVAC

This Building is located on the Middle School Campus adjacent to the Gym. The building is 5,000 square feet. There is a 50 by 25-foot area that is used as a server room. There are two 5-ton units that alternate to keep this area at 65 degrees. The remainder which is controlled by 4 other units is broken down between Office and repair areas. All units will need replacement for technology. The entire building has an Energy Management System installed.

### LED – Fixtures Sufficient For the Following:

None.

## Colt Elementary

### HVAC

Colt was built in 2008 and had an Energy Management System installed at time of construction. There are 4 large INOVENT units that will require recommissioning as part of this work.

### LED – Fixtures Sufficient For the Following:

Building A has 35 rooms which includes Administration, Library, office areas and restrooms.

Building B has 34 rooms which is primarily classrooms with restrooms and storage.

Building C has 28 rooms which is the Gymnasium, classrooms and restrooms.

Building D has 34 rooms and consists of the Art classroom, Science classroom and restrooms.

# EXHIBIT 2

## 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](http://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.

---



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

**Marble Falls ISD  
Board of Trustees  
Agenda Item Information**

Meeting Date:		
Meeting Type: Regular Meeting Special Meeting/Workshop Hearing	Agenda Placement: Public Hearing Information Items Presentation/Discussion Items Consideration Items Consent Agenda	
Date Submitted:		
Subject:		
Executive Summary:		
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:		
Submitted By:		
Board Approval Required:    Yes    No		

# JACKSON ASSOCIATES

## ARCHITECTURE & PLANNING

April 22, 2019

Mr. Michael Phillips  
Director of Maintenance  
Marble Falls ISD  
1800 Colt Circle  
Marble Falls, TX 78654

**Re: Proposal for Professional Services  
Independent Representative / 3<sup>rd</sup> Party Review  
JA Project # 19023**

Michael,

I appreciate this opportunity to propose our professional services as the Independent Representative / 3<sup>rd</sup> Party Reviewer for the E3 Design Build project with MFISD. The proposed scope of services and professional fees are as follows.

### **Basic Service**

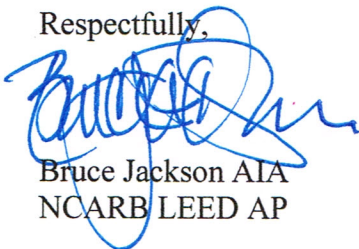
The Basic Service shall include the review of the required design and construction documentation provided by E3 pertaining to their HVAC System Replacement contract with the District. Our MEP engineers shall review the documentation and perform on-site observations as well to confirm the practicality and compliance of the HVAC replacement project.

### **Compensation**

For the Basic Service as described above we propose a flat fee in the amount of **\$30,000.** plus reimbursables such as gasoline or printing costs. Additional Services, as may be requested by MFISD, shall be invoiced based on our standard hourly rates or a predetermined fixed fee amount.

Please do not hesitate to call if you have any questions whatsoever concerning this proposal. I appreciate the opportunity and look forward to a very successful project. Please signify your approval below and return one copy to this office.

Respectfully,



Bruce Jackson AIA  
NCARB LEED AP

---

Agreed & Accepted for MFISD

Date



# AIA® Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the TWENTY-NINTH day of APRIL in the year TWO THOUSAND NINETEEN

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

**BETWEEN** 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

and the Construction Manager:

*(Name, legal status and address)*

Satterfield and Pontikes Construction, Inc.  
11750 Katy Freeway, Suite 500  
Houston, Texas 77079  
Phone: 512.879.5200  
Fax: 512.879.5209

for the following Project:

*(Name and address or location)*

2018 Bond Projects\* (\*as Identified in Exhibit 1)

The Architect:

*(Name, legal status and address)*

Huckabee & Associates, Inc.  
11501 Alterra Parkway  
Building 7, Suite 120  
Austin, Texas 78758

The Owner's Designated Representative:

### **ADDITIONS AND DELETIONS:**

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

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**Init.** / **AIA Document A133™ – 2009 (formerly A121™CMc – 2003).** Copyright © 1991, 2003 and 2009 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:04:43 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

**User Notes:**

(1786131763)

*(Name, address and other information)*

Dr. Chris Allen  
Superintendent of Schools  
Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654  
Phone: 830.693.4357  
Fax: 830.693.5685

The Construction Manager's Designated Representative:

*(Name, address and other information)*

Mr. John S. Marshall  
Vice President  
Satterfield and Pontikes Construction, Inc.  
11750 Katy Freeway, Suite 500  
Houston, Texas 77079  
Phone: 512.879.5200  
Fax: 512.879.5209

The Architect's Designated Representative:

*(Name, address and other information)*

Mr. Josh Brown, AIA  
Huckabee & Associates, Inc.  
11501 Alterra Parkway  
Building 7, Suite 120  
Austin, Texas 78758  
Phone: 972.292.7670

The Owner and Construction Manager agree as follows.

Init.

AIA Document A133™ – 2009 (formerly A121™CMc – 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. All rights reserved.  
**WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.**  
This document was produced by AIA software at 15:04:43 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.  
User Notes: (1786131763)

2

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The Contract Documents identified in this Section 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 Contractor, the Contract Documents identified in the signed contract prevail.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request. The Owner agrees to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as modified by the Owner, which document is

incorporated herein by reference. The term "Contractor" as used in A201–2017, as modified by the Owner, shall mean the Construction Manager.

**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.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. Such agreement shall be documented in writing and signed by the Owner, the Construction Manager and the Architect. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction which shall satisfy Owner's time requirements; 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.

**§ 2.1.2.1** During the Construction Documents Phase the Construction Manager shall review the contract documents to ascertain whether the components of the mechanical, electrical, and plumbing systems may be constructed without interference with each other, or with the structural or architectural components of the Project. In the event conflicts between such systems are discovered, the Construction Manager shall promptly notify the Owner and the Architect in writing.

**§ 2.1.2.2** Notwithstanding any provision of the General Conditions of the Contract for Construction to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Project if such conflicts could have been discovered by the Construction Manager through the exercise of reasonable diligence and the Owner and Architect were not informed of such conflicts as required by Subparagraph 2.1.2.1. Provided, however, that this provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to proposal of a Guaranteed Maximum Price.

**§ 2.1.3 Project Schedule.** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If updated Project schedules indicate that previously-approved schedules may

not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

#### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be prepared and updated at a minimum upon completion of the Schematic Design and Design Development Documents. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations to reduce cost or maintain budget, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

#### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project. All subcontracts and material purchases shall be awarded pursuant to the procedures set forth in Section 2.3.2.1. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items in accordance with applicable procurement requirements and the Contract Documents. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to the review and approval of the Architect, Owner and the Owner's professional consultants. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful

orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by, or that reasonably should have been discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** When the Construction Drawings and Specifications are one-hundred percent (100%) complete, as specified in Paragraph 2.1.4, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work, the Construction Manager's Fee and the Construction Manager's compensation for general conditions work. The Guaranteed Maximum Price shall be proposed no later than thirty (30) days after approval of the Construction Drawings and Specifications by Owner. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

#### **§ 2.2.2 [Paragraph Deleted.]**

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information provided by the Owner and contained in the Drawings and Specifications, but not which purport to change or create conflict with any terms of this Contract, as written;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, the Construction Manager's Fee and the Construction Manager's compensation for general conditions;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a fixed fee basis.

#### **§ 2.2.4 CONSTRUCTION AND BUYOUT CONTINGENCY.**

**§ 2.2.4.1** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a Construction Contingency. The Construction Contingency shall not allocated to any particular item of the Cost of the Work and is established to cover costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, not the result of the Construction Manager delay. The Construction Manager, may only utilize funds from the Construction Contingency with the Owner's prior written approval prior to any work being commenced, may utilize the Construction Contingency for any of the above items within the Cost of the Work without

the necessity of a Change Order without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, and at any other times upon request of the Owner, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The amount of the Construction Contingency shall be established at the time of the Guaranteed Maximum Price Amendment based upon various factors including the percentage completion of the construction drawings, but shall in no event exceed 5% of the projected Cost of the Work. Any unused Construction Contingency shall accrue to the Owner.

**§ 2.2.4.2 Savings and Contingency.** Within a reasonable time following execution of the GMP Amendment and as required by the schedule, Construction Manager shall complete procurement of all of the Work on the Project ("Buy Out"). As subcontracts are entered for the Work, the Construction Manager shall provide, with its next Application for Payment, a copy of its subcontract with the applicable subcontractor and a written report of the any difference between the Cost of the Work as contracted for by the Construction Manager and the cost of the same scope of Work as allocated and approved in the Guaranteed Maximum Price. This buyout difference, as well as any other savings realized by the Construction Manager, shall be accounted for as part of the Construction Contingency. Buyout Savings shall be completed and added to the Owner's Contingency within one-hundred and twenty (120) days of the Notice to Proceed. All savings will accrue and be available for use, in the same manner and on the same basis as the Construction Contingency, as detailed in subsection 2.2.4.1 above. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The then current balance of the Construction Contingency shall be reported with each of Construction Manager's Payment Applications.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price Proposal, its basis, or both, and provide underlying information or documentation forming the basis for the amounts shown in such Proposal.

**§ 2.2.6** The Owner shall be allowed not fewer than thirty (30) days after receipt of the Construction Manager's Guaranteed Maximum Price Proposal, to review and take action on the Proposal. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date described in this Section 2.2.6, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based and which was included in the final approved Proposal.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to acceptance of the Guaranteed Maximum Price and issuance of a Notice to Proceed, unless the Owner provides prior written authorization for such costs. Any costs incurred in contravention of this provision shall be undertaken at the sole risk of the Construction Manager.

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** The Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Construction Manager with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

§ 2.2.10 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the Amendment.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner’s issuance of a Notice to Proceed.

§ 2.3.1.3 The Contract Time shall be measured from the date of commencement of the Construction Phase.

§ 2.3.1.4 The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date set out in the Guaranteed Maximum Price Amendment, subject to adjustment of this Contract Time as provided in the Contract Documents.

#### § 2.3.2 Administration

§ 2.3.2.1 All subcontracts and purchase orders for the Project work shall be awarded in accordance with Texas Government Code §§2269.255 and 2269.256 as follows:

- .1 The Construction Manager shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than other than minor work which may be included in the General Conditions of the Contract for Construction.
- .2 The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own bid or proposal for any portion of the Work, it shall do so in the same manner as required of all other trade contractors or subcontractors; and the Owner shall determines whether or not the Construction Manager At-Risk’s bid or proposal provides the best value for the Owner.
- .3 The Construction Manager the Owner Representative, and Owner’s Consultant shall receive and open all subcontractor bids or proposals in a manner that does not disclose the contents of the bids or proposals during the selection process to a person not employed by the Construction Manager-At Risk, Architect, Engineer or Owner. The Construction Manager shall review and evaluate all bids or proposals, and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work.
- .4 In the event that the Owner requires that the Construction Manager award any portion of the work to a bidder not proposed by the Construction Manager, the Owner shall compensate the Construction Manager by a change in price, time, or guaranteed maximum cost for any additional cost or risk that the Construction Manager may incur by reason of the Owner’s requirements.
- .5 The Construction Manager shall deliver a copy of all advertising, solicitation documents, bids, proposals, evaluations of proposals and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the proposal.
- .6 The Construction Manager shall make all bids and proposals available for public inspection within seven (7) days following final selection of the subcontractors.
- .7 If Construction Manager’s proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager’s Fee for self-performed work.

§ 2.3.2.2 The Construction Manager shall include specific notices of the following statutory requirements in the information to bidders:

- .1 The successful bidder’s responsibility to provide workers’ compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful bidder’s responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258; and

Init.

- .3 A notice of the sales tax exemption for the project and the procedure for obtaining any required exemption verification or certificates.
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

Nothing herein shall prevent the Construction Manager from including other notices required or allowed by law.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2017.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, at any time, including at the meetings referenced in subsection 2.3.2.5, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.3 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Construction Manager shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.
- .2 The special shoring requirements, if any, of the Owner.
- .3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

§ 2.3.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Guaranteed Maximum Price.

#### § 2.4 Professional Services

Section 3.12.10 of A201–2017, shall apply to both the Preconstruction and Construction Phases.

Init.

## § 2.5 Hazardous Materials

The Construction Manager shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, polychlorinated biphenyl (PCB), or other hazardous materials. The Construction Manager shall have no responsibility to initially discover the presence of such hazardous materials on the project site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Construction Manager or the Construction Manager's consultants to be present on the project site. Provided, however, that these limitations shall not apply if the Construction Manager places or allows such hazardous materials to be placed on the Project site.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 For purposes of Texas Business and Commerce Code section 35.521(n)(3), the Owner represents to the Construction Manager that funds are available and have been authorized for the full contract amount for the construction of improvements.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. Such documents shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Contractor shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner, either directly or through the Architect, shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

**§ 3.2 Owner's Designated Representative**

The Owner is the Board of Trustees of the Marble Falls Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner 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.

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

**§ 3.3 Architect**

Construction Manager's services shall be provided in conjunction with the services of an architect. The terms of the agreement between the Owner and the Architect shall be available for inspection by the Construction Manager upon request.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Compensation for the services described in Paragraphs 2.1 and 2.2 shall be included in the Construction Manager's fee described in Paragraph 5.1.1; provided, however, if the Construction Phase does not commence for any reason, the Construction Manager's compensation for the services described in Paragraphs 2.1 and 2.2 shall be the necessary and reasonable cost of services actually performed, not to exceed the stipulated sum of: Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

**§ 4.1.3** Compensation for Preconstruction Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 4.2 Payments**

**§ 4.2.1** If the Construction Phase Services do not commence for any reason, compensation for Preconstruction Services shall be made upon termination of the Agreement.

**§ 4.2.2**

*(Paragraphs deleted)*  
[Paragraph Deleted.]

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee and General Conditions cost.

**§ 5.1.1** The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

The Construction Manager's fee shall be Two Point Nine Five percent (2.95%) of the actual Cost of Work as defined in Article 6.

**§ 5.1.1.2** The Construction Manager's compensation for general conditions shall be Five Point Two Zero percent (5.20%) 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 Construction Manager is compensated under this section 5.1.1.2 are described in Schedule "A" attached hereto.

**§ 5.1.1.3** The actual Cost of the Work does not include the Construction Manager's fee or compensation for general conditions.

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

See Article 7.1.4 of the AIA Document A201-2017 General Conditions of the Contract for Construction.

**§ 5.1.3** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

See Article 7.1.4 of the AIA Document A201-2017 General Conditions of the Contract for Construction.

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed the standard rate paid at the place of the Project.

**§ 5.1.5** Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
None.		

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2017, General Conditions of the Contract for Construction.

Init.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201–2017 shall have the meanings assigned to them in AIA Document A201–2017, and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops only if Construction Manager performs work with its own forces pursuant to Section 2.3.2.1.

§ 6.2.2 [Paragraph Deleted.]

§ 6.2.3 [Paragraph Deleted.]

§ 6.2.4 Costs paid or incurred by the Construction Manager 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 Sections 6.2.1 through 6.2.3.

§ 6.2.5 [Paragraph Deleted.]

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

Init.

**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ 6.5.1 [Paragraph Deleted.]

§ 6.5.2 [Paragraph Deleted.]

§ 6.5.3 [Paragraph Deleted.]

§ 6.5.4 [Paragraph Deleted.]

§ 6.5.5 [Paragraph Deleted.]

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

**§ 6.6 Miscellaneous Costs**

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

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Owner (1) is not exempt under Texas law, or (2) has not timely provided a certificate of exemption or similar proof of the Owner's tax exempt status.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 [Paragraph Deleted.]

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents.

§ 6.6.6 [Paragraph Deleted.]

§ 6.6.7 [Paragraph Deleted.]

§ 6.6.8 [Paragraph Deleted.]

§ 6.6.9 [Paragraph Deleted.]

**§ 6.7 Other Costs and Emergencies**

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2017.

§ 6.7.3 [Paragraph Deleted.]

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017, or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.8 Costs Not To Be Reimbursed**

§ 6.8.1 The Cost of the Work shall not include the items listed below:

Init.

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Construction Manager, Construction Manager's Subcontractors 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 Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager 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 Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the thirtieth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager 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.

§ 7.1.7 Subject to other provisions of the Contract 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 7.3.9 of AIA Document A201-2017;
- .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 Construction Manager's Fee, less retainage of five percent (5%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager'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 Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;

Init.

AIA Document A133™ – 2009 (formerly A121™CMc – 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:04:43 ET on 04/29/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale. User Notes: (1786131763)

16

- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 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 Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2017.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 31 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 The Contract shall not have been fully performed until all work required by the Construction Documents including but not limited to the following have been performed:

- .1 provision of record or as-built drawings executed or complete;
- .2 provision of executed or complete certificates of documents evidencing warranties and owner-operator's manuals;
- .3 provision of all documents evidencing required testing, inspection, verification and other engineering or consulting services required under the construction contract;
- .4 insuring agreements and bonds covering all periods of construction and any subsequent periods required under the contract.

#### ARTICLE 8 INSURANCE AND BONDS

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

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2017.)*

##### Type of Insurance or Bond

##### Limit of Liability or Bond Amount (\$0.00)

§ 8.1 The Construction Manager shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of existence of workers compensation coverage for its employees, or, at the Construction Manager's sole discretion, provide for coverage of the subcontractor's employees under the Construction Manager's workers' compensation insurance coverage. The Construction Manager shall maintain records of all required certificates of insurance provided by the subcontractors and shall forward copies to the Owner and the Architect.

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

### § 10.1.3

*(Paragraphs deleted)*

[Paragraph Deleted.]

### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment Owner may terminate this Agreement, with or without cause, at any time. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs.

§ 10.2.1 [Paragraph Deleted.]

§ 10.2.2 [Paragraph Deleted.]

### § 10.3 Suspension

Following execution by both parties of the Guaranteed Maximum Price Amendment, if the Project work is stopped for a period of ninety (90) days through no act or fault of the Construction Manager, then the Construction Manager may, upon ten (10) additional days written notice to the Owner, terminate this agreement and recover from the Owner payment for all work actually performed, for any loss sustained upon any materials, equipment, tools, equipment, and machinery, and profits on only that portion of the work actually performed prior to termination. If the cause of the work stoppage is removed prior to the end of the ten (10) day notice period, the Construction Manager may not terminate this agreement.

§ 10.4 The Owner or the Construction Manager may terminate this agreement for cause as provided in Article 14 of AIA Document A201-2017.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2017.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201-2017 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law and Attorney's Fees

§ 11.3.1 The Contract shall be governed by the laws of the State of Texas, without regard to the choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the county in which the Project is located. Any litigation to enforce or interpret any terms of the Contract or any other litigation arising out of or as a result of the Contract shall be brought in the State courts of said county.

§ 11.3.2 In any adjudication of a claim for breach of contract under this Agreement, reasonable and necessary attorney's fees that are equitable and just may be awarded to the prevailing party. Otherwise, no provision of this Agreement is a waiver of any immunity or defense or consent to suit.

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement

without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. 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.

§ 11.5 Other provisions:

§ 11.5.1 Pursuant to Texas Government Code Chapter 2270, the Construction Manager represents and warrants to the Owner that the Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement.

§ 11.5.2 Construction Manager verified and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If the Construction Manager has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

§ 11.6 MATERIALS AND VERIFICATION TESTING.

The Construction Manager will assist the Owner in selecting a separate contractor or contractors to provide construction materials inspections and testing, and verification testing services necessary for acceptance of the Project. The Owner shall select such contractor or contractors on the basis of demonstrated competence and qualifications in accordance with Government Code Chapter 2254, and shall pay such contractor or contractors for their services.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2017, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
  - .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
  - .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

Exhibit 1: The Project scope;  
Schedule "A": General Conditions  
Exhibit 2: Owner's Prevailing Wages

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

MARBLE FALLS INDEPENDENT SCHOOL DISTRICT

SATTERFIELD AND PONTIKES CONSTRUCTION, INC.

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

Dr. Chris Allen, Superintendent of Schools  
*(Printed name and title)*

Mr. Jim Muska, General Counsel and authorized  
representative of the Construction Manager  
*(Printed name and title)*

## ***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 15:04:43 ET on 04/29/2019 under Order No. 1439571919 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as 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<sup>®</sup> Document A201<sup>™</sup> – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Marble Falls –Turf and Track Surface Replacements – Marble Falls ISD High School Sports Complex – Football Field and Running Track

### THE OWNER:

*(Name, legal status and address)*

Marble Falls Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654  
Phone: 830.693.4357  
Fax: 830.693.5685

### THE ARCHITECT:\*

*(Name, legal status and address)*

Willis Environmental Engineering, Inc.  
310 Main  
Marble Falls, Texas 78654  
Phone: 830-693-3566  
Fax: 830-693-5362 \*All references to Architect herein shall refer to the Engineer, Willis Environmental Engineering, Inc.

### ADDITIONS AND DELETIONS:

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

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

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

### TABLE OF ARTICLES

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

Init.

AIA Document A201<sup>™</sup> – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA<sup>®</sup> Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA<sup>®</sup> Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale.  
User Notes: CLOUD TEMPLATE 08-18-17

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

Init.

## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

### Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, 12.1

### Accident Prevention

10

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

### Addenda

1.1.1

### Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

### Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### Arbitration

8.3.1, 15.3.2, **15.4**

## ARCHITECT

**4**

### Architect, Definition of

**4.1.1**

### Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

### Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

### Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

### Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Architect's Copyright

1.1.7, 1.5

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

## Basic Definitions

**1.1**

### Bidding Requirements

1.1.1

### Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

### Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

### Building Permit

3.7.1

## Capitalization

**1.3**

### Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale.

User Notes: CLOUD TEMPLATE 08-18-17

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4

Certificates of Insurance  
9.10.2

**Change Orders**

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

**Change Orders, Definition of**  
7.2.1

**CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

**Claims, Definition of**

**15.1.1**

Claims, Notice of  
1.6.2, 15.1.3

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4  
Claims and Timely Assertion of Claims  
15.4.1

**Claims for Additional Cost**

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

**Claims for Additional Time**

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

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

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration  
15.4.1

**Cleaning Up**

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

**Commencement of the Work, Definition of**  
8.1.2

**Communications**

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

**COMPLETION, PAYMENTS AND**

**9**

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

**Consolidation or Joinder**

**15.4.4**

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of**  
7.3.1

**Construction Change Directives**

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

**Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

**Continuing Contract Performance**

**15.1.4**

**Contract, Definition of**

**1.1.2**

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3

**Contract Documents, Definition of**

**1.1.1**

**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

**Contract Sum, Definition of**  
9.1

**9.1**

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

**Contract Time, Definition of**

**8.1.1**

**CONTRACTOR**

**3**

Contractor, Definition of

**3.1, 6.1.2**

**Contractor's Construction and Submittal Schedules**

**3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2**

Init.

Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

**Contractor's Liability Insurance**  
**11.1**  
Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4  
Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4  
Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1  
Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8  
Contractor's Review of Contract Documents  
3.2  
Contractor's Right to Stop the Work  
2.2.2, 9.7  
Contractor's Right to Terminate the Contract  
14.1  
Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3  
Contractor's Superintendent  
3.9, 10.2.6  
Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4  
Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11  
Copyrights  
1.5, **3.17**  
Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1  
**Correlation and Intent of the Contract Documents**  
**1.2**  
**Cost**, Definition of  
**7.3.4**  
Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14  
**Cutting and Patching**  
**3.14**, 6.2.5

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7  
Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2  
**Date of Commencement of the Work**, Definition of  
**8.1.2**  
**Date of Substantial Completion**, Definition of  
**8.1.3**  
**Day**, Definition of  
**8.1.4**  
Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1  
Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1  
**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5  
**Digital Data Use and Transmission**  
**1.7**  
Disputes  
6.3, 7.3.9, 15.1, 15.2  
**Documents and Samples at the Site**  
**3.11**  
**Drawings**, Definition of  
**1.1.5**  
Drawings and Specifications, Use and Ownership of  
3.11  
Effective Date of Insurance  
8.2.2  
**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**  
Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1  
Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Init.

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**

Guarantees (See Warranty)

**Hazardous Materials and Substances**  
10.2.4, **10.3**

Identification of Subcontractors and Suppliers  
5.2.1

**Indemnification**  
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

**Information and Services Required of the Owner**  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

**Initial Decision**  
**15.2**

**Initial Decision Maker, Definition of**  
1.1.8

Initial Decision Maker, Decisions  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**  
**10.2.8**, 10.4

Inspections  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders  
1.1.1

Instructions to the Contractor  
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

**Instruments of Service, Definition of**  
**1.1.7**

Insurance  
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration  
11.1.4, 11.2.3

**Insurance, Contractor's Liability**  
**11.1**

Insurance, Effective Date of  
8.2.2, 14.4.2

**Insurance, Owner's Liability**  
**11.2**

**Insurance, Property**  
**10.2.5**, 11.2, 11.4, 11.5

Insurance, Stored Materials  
9.3.2

**INSURANCE AND BONDS**

**11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1

Insured loss, Adjustment and Settlement of  
11.5

Intent of the Contract Documents  
1.2.1, 4.2.7, 4.2.12, 4.2.13

**Interest**  
**13.5**

**Interpretation**  
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written  
4.2.11, 4.2.12

Judgment on Final Award  
15.4.2

**Labor and Materials, Equipment**  
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes  
8.3.1

Laws and Regulations  
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of  
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability  
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

**Materials, Hazardous**  
10.2.4, **10.3**

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

**Mediation**  
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

**Minor Changes in the Work**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

Init.

## MISCELLANEOUS PROVISIONS

### 13

#### Modifications, Definition of

##### 1.1.1

#### Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

#### Mutual Responsibility

### 6.2

#### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

#### Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

#### Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

#### Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

#### Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

#### Notice of Testing and Inspections

13.4.1, 13.4.2

#### Observations, Contractor's

3.2, 3.7.4

#### Occupancy

2.3.1, 9.6.6, 9.8

#### Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## OWNER

### 2

#### Owner, Definition of

##### 2.1.1

#### Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

#### Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

#### Owner's Insurance

### 11.2

#### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

#### Owner's Right to Carry Out the Work

2.5, 14.2.2

#### Owner's Right to Clean Up

### 6.3

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

### 6.1

#### Owner's Right to Stop the Work

### 2.4

#### Owner's Right to Suspend the Work

14.3

#### Owner's Right to Terminate the Contract

14.2, 14.4

#### Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

#### Partial Occupancy or Use

9.6.6, 9.9

#### Patching, Cutting and

3.14, 6.2.5

#### Patents

3.17

#### Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

#### Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

#### Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

#### Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

#### Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

#### Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## PAYMENTS AND COMPLETION

### 9

#### Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

#### PCB

10.3.1

#### Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

#### Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

## PERSONS AND PROPERTY, PROTECTION OF

### 10

#### Polychlorinated Biphenyl

10.3.1

#### Product Data, Definition of

### 3.12.2

#### Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

#### Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

#### Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.  
User Notes: CLOUD TEMPLATE 08-18-17

(1954114631)

**Project, Definition of**  
**1.1.4**  
Project Representatives  
4.2.10  
**Property Insurance**  
10.2.5, **11.2**  
**Proposal Requirements**  
1.1.1  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
Regulations and Laws  
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4  
Rejection of Work  
4.2.6, 12.2.1  
Releases and Waivers of Liens  
9.3.1, 9.10.2  
Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1  
Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2**, 3.12.7, 6.1.3  
Review of Contractor's Submittals by Owner and  
Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and Samples  
by Contractor  
3.12  
**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
12.2.4, **13.3**, 14, 15.4  
**Royalties, Patents and Copyrights**  
**3.17**  
Rules and Notices for Arbitration  
15.4.1  
**Safety of Persons and Property**  
**10.2**, 10.4  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
3.11, **3.12**, 4.2.7  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2**, 9.3.1  
Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Separate Contractors, Definition of**  
**6.1.1**  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
3.11, **3.12**, 4.2.7  
**Site, Use of**  
**3.13**, 6.1.1, 6.2.1  
Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4  
Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  
Special Inspections and Testing  
4.2.6, 12.2.1, 13.4  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14  
Statute of Limitations  
15.1.2, 15.4.1.1  
Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1  
Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
9.6.7  
**Subcontractual Relations**  
**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  
Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,  
9.9.1, 9.10.2, 9.10.3  
Submission Schedule  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
6.1.1, **11.3**  
**Substances, Hazardous**  
**10.3**  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2,  
15.1.2  
**Substantial Completion, Definition of**  
**9.8.1**  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
2.3.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
**Sub-subcontractor, Definition of**  
**5.1.2**

Init.

Subsurface Conditions  
3.7.4

**Successors and Assigns**  
**13.2**

**Superintendent**  
3.9, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of  
9.8.5, 9.10.2, 9.10.3

Surveys  
1.1.7, 2.3.4

**Suspension by the Owner for Convenience**  
**14.3**

Suspension of the Work  
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract  
5.4.1.1, 14

**Taxes**  
3.6, 3.8.2.1, 7.3.4.4

**Termination by the Contractor**  
**14.1**, 15.1.7

**Termination by the Owner for Cause**  
5.4.1.1, **14.2**, 15.1.7

**Termination by the Owner for Convenience**  
**14.4**

Termination of the Architect  
2.3.3

Termination of the Contractor Employment  
14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**

**14**

**Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

**TIME**

**8**

**Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

**Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

**Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

**Title to Work**

9.3.2, 9.3.3

**UNCOVERING AND CORRECTION OF WORK**  
**12**

**Uncovering of Work**  
**12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

**Unit Prices**

7.3.3.2, 9.1.2

**Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

**Use of Site**

**3.13**, 6.1.1, 6.2.1

**Values, Schedule of**

**9.2**, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

**Waivers of Subrogation**

6.1.1, **11.3**

**Warranty**

**3.5**, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

**Work, Definition of**

**1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

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

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale.

User Notes: CLOUD TEMPLATE 08-18-17

**§ 1.1.10 MISCELLANEOUS OTHER WORDS**

**§ 1.1.10.1 BUSINESS DAY**

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

**§ 1.1.10.2 CALENDAR DAY**

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

**§ 1.1.10.3 HOLIDAYS**

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

**§ 1.1.10.4 WORK DAY**

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

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

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

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

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

**§ 1.2.4 PRECEDENCE OF THE CONTRACT DOCUMENTS**

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

- .1 Contract Modifications signed by Contractor and Owner.
- .2 Addenda, with those of later date having precedence over those of earlier date.
- .3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.
- .4 Not Applicable.
- .5 Agreement – AIA Document A101-2017, as modified by the Owner for the Project.

Init.

**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.

#### **§ 1.2.5 RELATION OF SPECIFICATIONS AND DRAWINGS**

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

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

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

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

#### **§ 1.3 Capitalization**

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

#### **§ 1.4 Interpretation**

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

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

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

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

#### **§ 1.6 Notice**

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

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

#### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

#### § 1.8 Building Information Models Use and Reliance

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

### ARTICLE 2 OWNER

#### § 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the Marble Falls Independent School District and is referred to throughout the Contract Documents as if singular in number. 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. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

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

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

#### § 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 [Paragraph Deleted.]

§ 2.2.3 [Paragraph Deleted.]

§ 2.2.4 [Paragraph Deleted.]

#### § 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

Init.

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

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

§ 2.3.7 Owner's personnel may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

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

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and

init.

equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

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

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

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

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

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

§ 3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

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

Init.

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

### § 3.3 Supervision and Construction Procedures

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

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

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

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

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

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

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

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the

Init.

ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

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

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

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

#### **§ 3.4 Labor and Materials**

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

##### **§ 3.4.1.1 PREVAILING WAGES**

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

**§ 3.4.1.2** In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

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

**§ 3.4.2** Substitutions will not be accepted unless approved through the procedures set forth in the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum, regardless of acceptance or rejection, amounts paid to

Init.

the Architect to evaluate the Contractors proposed substitutions. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

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

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

**§ 3.4.5** Contractor will obtain all required national Criminal History Record Information ("CHRI"), pursuant to Texas Education Code section 22.0834 and Texas Government Code 411.0845, on all employees, subcontractors of every tier ("Subcontractor"), Subcontractor's employees, independent contractors, applicants, agents, or consultants, if (1) the person will have continuing duties related to the Project and (2) the duties are or will be performed on Owner's property and the person(s) will or may have direct contact with students ("Covered Employee"). Contractor shall assume all expenses for obtaining CHRI. Any Covered Employee shall be disqualified and prohibited from performing any contract duties or services if that Covered Employee has been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History"). The Contractor shall certify to the Owner in writing that it has complied with this section and that none of its Covered Employees have a Disqualifying Criminal History on a form provided by the Owner. Contractor agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses during the performance of this contract, Contractor will immediately remove the Covered Employee from Owner's property or other location where students are regularly present, and notify the Owner of said removal within three (3) days of doing so. Contractor understands that any failure to comply with the requirements of this section may be grounds for termination of the contract. Instructions for complying with CHRI requirements are available from the Owner.

### **§ 3.5 Warranty**

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

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

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

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

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

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

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

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

### § 3.6 Taxes

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

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

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

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

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

*(Paragraphs deleted)*

**§ 3.7.4 Concealed or Unknown Conditions. Claims for Concealed or Unknown Conditions.**

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

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

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

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

**§ 3.8 Allowances**

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

Init.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

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

### § 3.9 Superintendent

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

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

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

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

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

§ 3.10.1 The Contractor shall prepare and submit a Contractor's construction schedule for the Work in accordance with the procedures set forth in Contract Documents.

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

Init.

Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

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

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

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

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

### **§ 3.11 Documents and Samples at the Site**

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

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

### **§ 3.12 Shop Drawings, Product Data and Samples**

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

Init.

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

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

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

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

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

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

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

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

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

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

Init.

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

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

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

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

### **§ 3.16 Access to Work**

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

**§ 3.16.1** Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

### **§ 3.17 Royalties, Patents and Copyrights**

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

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

**§ 3.18 Indemnification**

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

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

**§ 3.18.3 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF OWNER, OWNER'S CONSULTANTS, ARCHITECT OR ARCHITECT'S CONSULTANTS. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY IS PROVIDED FOR IN THIS SECTION AS TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S TOOLS AND EQUIPMENT AND RENTAL ITEMS, IS AN AGREEMENT BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, AND THAT OF OWNER'S CONSULTANTS, THE ARCHITECT AND ARCHITECT'S CONSULTANTS WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE LOSS OR DAMAGE. PROVIDED**

Init.

**HOWEVER, THAT WHERE THE NEGLIGENCE OF OWNER OR ARCHITECT IS A CONCURRING CAUSE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER, ARCHITECT AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER, ARCHITECT AND CONTRACTOR ARE ALL PARTIES.**

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

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

### **§ 3.19 REPRESENTATIONS AND WARRANTIES**

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

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

### **§ 3.20 BUSINESS STANDARDS**

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

### **§ 3.21 ANTITRUST VIOLATION**

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

§ 4.1.2 [Paragraph Deleted.]

Init.

## § 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

## § 4.2.4 Communications

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

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

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

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

Init.

compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has

Init.

reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

### § 5.3 Subcontractual Relations

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

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

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

### § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

Init.

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 Mutual Responsibility

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

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

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

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

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

### § 6.3 Owner's Right to Clean Up

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

Init.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

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

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

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

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

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

### § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

Init.

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

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

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

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

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

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

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

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

#### **§ 7.4 Minor Changes in the Work**

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

Init.

prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

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

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

*(Paragraph deleted)*

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

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

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

### § 8.2 Progress and Completion

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

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

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

§ 8.2.4 In the event Substantial Completion 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 Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

§ 8.2.5 Not Applicable.

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

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

### § 8.3 Delays and Extensions of Time

§ 8.3.1 The Owner, except as provided for in this Section 8.3.1, shall not be liable to the Contractor for delay to the Contractor's Work by the act, neglect or default of the Owner or the Architect, or by reason of fire, act of God, riot, strike, action of workmen or others, or any cause beyond the Owner's control. Should the Owner or Architect delay the Contractor in the Work, Contractor shall receive an extension of time for completion equal to the delay if a written claim is made within forty-eight (48) hours, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such Owner-caused delays.

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes: CLOUD TEMPLATE 08-18-17

(1954114631)

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1.3 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

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

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

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

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

Init.

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

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

#### **§ 9.4 Certificates for Payment**

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

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

#### **§ 9.5 Decisions to Withhold Certification**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

Init.

- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- .9 evidence of financial inability to perform the Contract fully;
- .10 failure to submit record documents required by the Contract; or
- .11 failure of the Contractor to perform any other obligations of the Contract.

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

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

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

#### § 9.6 Progress Payments

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

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

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

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

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

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

Init.

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

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

### § 9.7 Failure of Payment

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

### § 9.8 Substantial Completion

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

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

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

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

Init.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

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

### § 9.9 Partial Occupancy or Use

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

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

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

### § 9.10 Final Completion and Final Payment

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

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

Init.

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

§ 9.10.4

*(Paragraphs deleted)*  
[Paragraph Deleted.]

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

§ 9.11 AUDIT

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility;

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No. 1439571919 which expires on 01/11/2020, and is not for resale.  
User Notes: CLOUD TEMPLATE 08-18-17

39

(1954114631)

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

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

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

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

Init.

**§ 10.3 Hazardous Materials and Substances**

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

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

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

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

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

**§ 10.3.6** [Paragraph Deleted.]

**§ 10.4 Emergencies**

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

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall carry and maintain in force insurance described below. Prior to execution of the Contract, the Contractor shall procure insurance coverage in the types and amounts as follows:

Init.

AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:24:13 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.  
User Notes: CLOUD TEMPLATE 08-18-17

<b>Workmen's Compensation:</b> (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor's employment of workers and anyone for whom Contractor shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
<b>Employer's Liability:</b>	\$1,000,000.00
<b>Commercial General Liability:</b>	
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)
<b>Property Damage</b>	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Independent Contractors	(Same limits as above)
Contractual Liability	(Same limits as above)
<b>Automobile Liability:</b>	
Bodily Injury/Property Damage	\$1,000,000.00 combined single limit
Property Damage	\$1,000,000.00 each occurrence
<b>Umbrella or Excess Liability</b>	\$5,000,000.00 each occurrence/aggregate

**All Risk Builders Risk** against the perils of fire, lightening, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.

§ 11.1.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are admitted and authorized to issue such policies in the State of Texas.

§ 11.1.3 The General Liability and Automobile so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 11.1.4 If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.1.5 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect

Init.

to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.1.6 Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

#### § 11.1.9 Workers' Compensation Insurance Coverage

##### .1 Definitions:

.1.1 **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 the Project, for the duration of the Project.

.1.2 **Duration of the Project.** Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 **Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096).** Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity 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 Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

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

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

Init.

- .6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- .7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .8 The Contractor 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 Contractor 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 Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
  - .9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .9.4 obtain from each other person with whom it contracts, and provide to the Contractor:
    - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
    - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .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 Owner 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 Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC Rule §(a)(7)]

§ 11.1.10 The Owner and Contractor shall waive all rights against (1) each other and the Contractors, Subcontractors, agents and employees each of the other, and (2) the Architect and separate Contractors, if any, and their contractors, Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the liability imposed by Section 3.18.3. The Owner or the Contractor, as appropriate, shall require of the Architect, separate contractors, contractors and Subcontractors by appropriate agreements, written where legally required for validity, similar waivers, each in favor of all other parties enumerated in this Section 11.1.10.

§ 11.2 Owner's Insurance [Paragraph Deleted.]

*(Paragraphs deleted)*

Init.

§ 11.3 Waivers of Subrogation [Paragraph Deleted.]

*(Paragraphs deleted)*

§ 11.4 PERFORMANCE BOND AND PAYMENT

§ 11.4.1 The Contractor 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 Contract Sum.

§ 11.4.2 The Contractor 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 Contract Sum 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.

§ 11.4.3 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.

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.

The Sureties shall promptly file a signed copy of the Contract, Performance, and Payment Bonds with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Article 8 of the AIA Document A133-2009.

§ 11.4.4 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

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

§ 11.4.6 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 Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.7 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 Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 11.4.8 By inclusion of this Section 11.4.8 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their 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 Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

Init.

**§11.5 Adjustment and Settlement of Insured Loss [Paragraph Deleted.]**

*(Paragraphs deleted)*

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work has been covered and the Architect has specifically requested to see such Work, or if any known deficiencies exist, or the Contract Documents specifically request inspection prior to its being covered, the Architect may request to see that Work and it shall be uncovered by the Contractor. If the Work is not in accordance with the Contract Documents, it must be corrected and covered at the expense of the Contractor. If the Work is according to the Contract Documents, the cost to restore cover on the Work is at the sole expense of the Contractor.

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

**§ 12.2 Correction of Work**

**§ 12.2.1 Before Substantial Completion**

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

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

**§ 12.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

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

Init.

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

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear in the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work.

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

Init.

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

#### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Except for tests, inspections and approvals required to be provided by the Contractor in the Contract Documents, the Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

#### § 13.7 CONTRACTORS RECORDS

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

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts,

Init.

contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

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

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

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

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

#### **§ 13.8 NO THIRD PARTY BENEFICIARIES**

There are no third party beneficiaries to this agreement.

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

#### **§ 14.1 Termination by the Contractor**

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

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

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

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

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions

Init.

of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 or any Subcontractor becomes insolvent, enters bankruptcy, receivership or other like proceeding; voluntary or involuntarily, or makes an assignment for the benefit of creditors; and the Contractor, within fifteen (15) days after receipt of notice from the Owner, fails to provide satisfactory evidence that the Contractor will either (i) perform the Work of such Subcontractor with the Contractor's own forces, in a timely manner, or (ii) replace the Subcontractor with another similarly qualified Subcontractor who is ready, willing and able to do such Subcontractor's Work in a timely manner
- .5 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; or
- .6 otherwise is guilty of substantial breach of a provision of the Contract Documents

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

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

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

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

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

#### § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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 Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 Termination by the Owner for Convenience

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

Init.

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims [Paragraph Deleted.]

#### § 15.1.3 Notice of Claims

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

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

#### § 15.1.4 Continuing Contract Performance

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

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

#### § 15.1.5 Claims for Additional Cost

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

#### § 15.1.6 Claims for Additional Time

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

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

Init.

economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth day of the month following the month during which the delays or disruptions occurred.

*(Paragraphs deleted)*

#### **§ 15.1.7 CALCULATING CLAIMS FOR DAMAGES**

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

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

#### **§ 15.2 Initial Decision**

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

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

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

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

**§ 15.2.5** [Paragraph Deleted.]

**§ 15.2.6** [Paragraph Deleted.]

**§ 15.2.6.1** [Paragraph Deleted.]

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

#### **§ 15.2.8 WAIVER OF LIEN**

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

Init.

**§ 15.3 Mediation**

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

**§ 15.3.2** Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

**§ 15.3.3** In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

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

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

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

**§ 15.4 Immunity**

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

**§ 15.4.1.1** [Paragraph Deleted.]

**§ 15.4.2** [Paragraph Deleted.]

**§ 15.4.3** [Paragraph Deleted.]

**§ 15.4.4** [Paragraph Deleted.]

**MARBLE FALLS INDEPENDENT SCHOOL DISTRICT**

**PARAGON SPORTS CONSTRUCTORS, LLC**

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

Chris Allen, Ed.D., Superintendent of Schools  
*(Printed name and title)*

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

William Chaffe, President  
*(Printed name, title, and license number, if required)*

Init.

## **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 11:24:13 ET on 04/26/2019 under Order No. 1439571919 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, 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<sup>®</sup> Document A101<sup>™</sup> – 2017

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the TWENTY-NINTH day of APRIL in the year TWO THOUSAND AND NINETEEN.  
*(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 Contractor:  
*(Name, legal status, address and other information)*

Paragon Sports Constructors, LLC  
3131 Turtle Creek Blvd., Floor 11  
Dallas, Texas 75219-5405

and

5001 Saunders Road  
Fort Worth, Texas

Phone: 817-916-5003  
Fax: 817-916-5100

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

Turf and Track Surface Replacements – Marble Falls ISD High School Sports Complex –  
Football Field and Running Track

2101 Mustang Drive, Marble Falls, Texas 78654

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

Willis Environmental Engineering, Inc.  
310 Main  
Marble Falls, Texas 78654  
Phone: 830-693-3566  
Fax: 830-693-5362

### **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 parties should complete A101<sup>™</sup>-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201<sup>™</sup>-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

\*All references to Architect herein shall refer to the Engineer, Willis Environmental Engineering, Inc.

The Owner and Contractor agree as follows:

Init.

AIA Document A101™ – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:33:30 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.  
User Notes:

(1144153464)

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**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.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

June 1, 2019

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

Init.

AIA Document A101™ – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:33:30 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1144153464)

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[ X ] By the following date: August 1, 2019

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Not Applicable.	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be NINE HUNDRED FORTY-FOUR THOUSAND TWO HUNDRED EIGHTY-TWO DOLLARS AND NO/100 DOLLARS (\$944,282.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Legion NXT 2.00" with E-Layer	\$15,932.00
PSC install Pole Vault runway (4' x 140') with 2 Landing areas (22'x22')	\$29,939.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
None.		

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
(Row deleted)	

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
None.		

Init.

§ 4.5 Liquidated damages, if any:  
*(Insert terms and conditions for liquidated damages, if any.)*

None.

§ 4.6 Other:  
*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

None.

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 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:

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 If approved in advance by the Owner, 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 suitably stored off the site at a location agreed upon in writing; and

- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

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

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

Five Percent (5%).

§ 5.1.7.1.1 The following items are not subject to retainage:

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

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

N/A

### § 5.1.7.3

*(Paragraphs deleted)*

Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10 of AIA Document A201-2017. 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.

§ 5.1.8 [Paragraph Deleted.]

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

### § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 Contractor has submitted Consent of Surety to Final Payment, and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 31 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**§ 5.3 Interest**

*(Paragraph deleted)*

Delinquent payments are subject to the Texas Prompt Pay Act, Texas Government Code Chapter 2251.

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 Binding Dispute Resolution**

For any Claim but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1**

*(Paragraphs deleted)*

[Paragraph Deleted.]

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner’s representative:

*(Name, address, email address, and other information)*

Dr. Chris Allen  
Superintendent of Schools

Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654  
Phone: 830.693.4357  
Fax: 830.693.5685

§ 8.3 The Contractor's representative:  
*(Name, address, email address, and other information)*

Mr. William Chaffe  
President  
Paragon Sports Constructors, LLC  
3131 Turtle Creek Blvd., Floor 11  
Dallas, Texas 75219-5405

and

5001 Saunders Road  
Fort Worth, Texas

Phone: 817-916-5003  
Fax: 817-916-5100

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

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document A201™–2017, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A201™–2017, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7 Other provisions:**

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

§ 8.7.2 By signing this Agreement, the undersigned Contractor certifies as follows: Under Section 231.009 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld in this certification is inaccurate.

§ 8.7.3 The Contractor shall coordinate its efforts with any other Contractor working on the same site.

§ 8.7.4 The Contract Sum is based upon the Local Government Purchasing Cooperative d/b/a Buyboard® ("Cooperative" or "BuyBoard" herein) Contract No. 560-18 under Indoor and Outdoor Sports Surfaces, Repair and Renovation, and Gym Floor Refinishing. Contractor represents, warrants and covenants to Owner that the Project is within the scope of Contractor's Contract No. 560-18 with Buyboard and that the Contract Sum meets and does not exceed the R.S. Means Cost Breakdown requirements and pricing terms required by the BuyBoard Contract Number 560-18. Contractor further represents, warrants and covenants to Owner that it will comply with the BuyBoard General Terms and Conditions therein.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 Not Applicable
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4

Paragraph Deleted.

- .5 Drawings

Number	Title	Date
None.		

- .6 Specifications

Section	Title	Date	Pages
None.			

- .7 Addenda, if any:

Number	Date	Pages
None.		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

The Sustainability Plan:

Title	Date	Pages

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

Owner's Prevailing Wage Schedule attached as Exhibit A and fully incorporated herein

Scope of Work attached as Exhibit B and fully incorporated herein (all references to specifications and drawings shall refer to the Scope of Work at Exhibit B)

Engineer's Certification attached as Exhibit C and fully incorporated herein

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

**MARBLE FALLS INDEPENDENT SCHOOL  
DISTRICT**

**PARAGON SPORTS CONSTRUCTORS, LLC**

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

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

Chris Allen, Ed.D., Superintendent of Schools  
*(Printed name and title)*

William Chaffe, President  
*(Printed name and title)*

# ***Additions and Deletions Report for AIA® Document A101™ – 2017***

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

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 11:33:30 ET on 04/26/2019.

**PAGE 1**

**AGREEMENT** made as of the TWENTY-NINTH day of APRIL in the year TWO THOUSAND AND NINETEEN.

...

*(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

...

Paragon Sports Constructors, LLC  
3131 Turtle Creek Blvd., Floor 11  
Dallas, Texas 75219-5405  
and

5001 Saunders Road  
Fort Worth, Texas

Phone: 817-916-5003  
Fax: 817-916-5100

...

Turf and Track Surface Replacements – Marble Falls ISD High School Sports Complex – Football Field and Running Track

2101 Mustang Drive, Marble Falls, Texas 78654

The ~~Architect~~: Architect\*:

...

Willis Environmental Engineering, Inc.  
310 Main  
Marble Falls, Texas 78654  
Phone: 830-693-3566

**Additions and Deletions Report for AIA Document A101™ – 2017.** Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. **All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:33:30 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

**User Notes:**

(1144153464)

Fax: 830-693-5362

\*All references to Architect herein shall refer to the Engineer, Willis Environmental Engineering, Inc.

The Owner and Contractor agree as follows:

PAGE 3

**EXHIBIT A — INSURANCE AND BONDS**

...

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.

...

[ X ] Established as follows:

...

June 1, 2019

PAGE 4

[ X ] By the following date: August 1, 2019

...

Not Applicable.

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (~~\$—~~), NINE HUNDRED FORTY-FOUR THOUSAND TWO HUNDRED EIGHTY-TWO DOLLARS AND NO/100 DOLLARS (\$944,282.00), subject to additions and deductions as provided in the Contract Documents.

...

<u>Legion NXT 2.00" with E-Layer</u>	<u>\$15,932.00</u>
<u>PSC install Pole Vault runway (4' x 140') with 2 Landing areas (22'x22')</u>	<u>\$29,939.00</u>

...

None.

...

Additions and Deletions Report for AIA Document A101™ – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:33:30 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1144153464)

...

None.

PAGE 5

None.

...

None.

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~(—)~~ forty-five (45) days after the Architect receives the Application for Payment.

...

- .2 ~~That~~ If approved in advance by the Owner, 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, or~~ suitably stored off the site at a location agreed upon in writing; and

PAGE 6

Five Percent (5%).

...

N/A

...

N/A

§ 5.1.7.3 ~~Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10 of AIA Document A201-2017. 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.

~~§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017. [Paragraph Deleted.]~~

...

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 Contractor has submitted Consent of Surety to Final Payment, and
- ~~.2~~ .3 a final Certificate for Payment has been issued by the Architect.

~~§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30-31 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

PAGE 7

~~Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.) Delinquent payments are subject to the Texas Prompt Pay Act, Texas Government Code Chapter 2251.~~

~~—%~~

...

~~For any Claim subject to, but not resolved by, by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:~~

...

[  ] Litigation in a court of competent jurisdiction

...

~~§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows: (Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)~~

[Paragraph Deleted.]

...

Dr. Chris Allen  
Superintendent of Schools  
Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654  
Phone: 830.693.4357  
Fax: 830.693.5685

PAGE 8

Additions and Deletions Report for AIA Document A101™ – 2017. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 11:33:30 ET on 04/26/2019 under Order No.1439571919 which expires on 01/11/2020, and is not for resale.

User Notes:

(1144153464)

Mr. William Chaffe  
President  
Paragon Sports Constructors, LLC  
3131 Turtle Creek Blvd., Floor 11  
Dallas, Texas 75219-5405

and

5001 Saunders Road  
Fort Worth, Texas

Phone: 817-916-5003  
Fax: 817-916-5100

...

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, A201™-2017, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, A201™-2017, and elsewhere in the Contract Documents.

...

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

§ 8.7.2 By signing this Agreement, the undersigned Contractor certifies as follows: Under Section 231.009 of the Texas Family Code, the Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld in this certification is inaccurate.

§ 8.7.3 The Contractor shall coordinate its efforts with any other Contractor working on the same site.

§ 8.7.4 The Contract Sum is based upon the Local Government Purchasing Cooperative d/b/a Buyboard® ("Cooperative" or "BuyBoard" herein) Contract No. 560-18 under Indoor and Outdoor Sports Surfaces, Repair and Renovation, and Gym Floor Refinishing. Contractor represents, warrants and covenants to Owner that the Project is within the scope of Contractor's Contract No. 560-18 with Buyboard and that the Contract Sum meets and does not exceed the R.S. Means Cost Breakdown requirements and pricing terms required by the BuyBoard Contract Number 560-18. Contractor further represents, warrants and covenants to Owner that it will comply with the BuyBoard General Terms and Conditions therein.

PAGE 9

.2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds Not Applicable

...

.4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

Paragraph Deleted.

...

None.

...

None.

...

None.

PAGE 10

Owner's Prevailing Wage Schedule attached as Exhibit A and fully incorporated herein

Scope of Work attached as Exhibit B and fully incorporated herein (all references to specifications and drawings shall refer to the Scope of Work at Exhibit B)

Engineer's Certification attached as Exhibit C and fully incorporated herein

...

MARBLE FALLS INDEPENDENT SCHOOL  
DISTRICT

PARAGON SPORTS CONSTRUCTORS, LLC

\_\_\_\_\_

\_\_\_\_\_

...

Chris Allen, Ed.D., Superintendent of Schools

William Chaffe, President

## ***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 11:33:30 ET on 04/26/2019 under Order No. 1439571919 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, 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)*

# EXHIBIT A

## 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](http://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.

---

**EXHIBIT B**

**SCOPE OF WORK**

**Powerblade Pro 2.00” with ELayer**

1. CONTRACTOR will remove existing turf and dispose off site
2. CONTRACTOR will laser grade existing turf stone base
3. CONTRACTOR will provide and install new 19mm Paragon EL 19 E-Layer
4. CONTRACTOR will provide an SMG TurfCare 1400 sweeper/groomer and maintenance instruction
5. CONTRACTOR will provide a five-year service plan to include sweeping, grooming and field testing
6. CONTRACTOR will provide and install Shaw Powerblade Pro 2.00” synthetic turf system with all football and soccer markings inlaid. Includes 8-year warranty, end zone lettering and center field logo included based upon existing layout from standard colors.

**Turf** **\$531,597.00**

**PTS 4000 Track Surface Grey**

1. CONTRACTOR will remove existing track surface and dispose off site
2. CONTRACTOR will inspect existing asphalt base
3. CONTRACTOR will provide and install new PTS 4000 Grey full pour track surface
4. CONTRACTOR will stripe track for 400 meters

**Track** **\$366,814.00**

**Total Base:** **\$898,411.00**

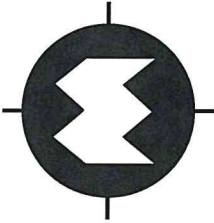
**Add Alternate for Legion NXT 2.00” with E-Layer**

CONTRACTOR will provide and install Shaw Legion NXT 2.00” synthetic turf system with all football and soccer markings inlaid. Includes 8 year warranty, end zone lettering and center field logo included based upon existing layout from standard colors – in lieu of Powerblade Pro

**Alt. Turf**  
**Add:** **\$15,932.00**

**Alternate:** **CONTRACTOR install Pole Vault runway (4’x140’) with 2 Landing areas (22’x22’)**  
**Add** **\$29, 939.00**

# EXHIBIT C



*Willis Environmental Engineering, Inc.*

310 main • marble falls, texas • 78654  
(830) 693-3566 • fax (830) 693-5362  
e-mail: lwilke@willis-engineering.com

April 24, 2019

Marble Falls Independent School District  
1800 Colt Circle  
Marble Falls, Texas 78654

Re: Turf and Track Surface Replacements  
Marble Falls ISD High School Sports Complex  
Football Field and Running Track

To Whom It May Concern:

I have reviewed the Scope of Work from PSC Paragon Sports concerning the turf and track surface replacements together with the construction plans for the same field dated February 18, 2008. The proposed replacement process is compatible with the original construction and will not impact the subsurface drainage system. The field and track existing subgrades shall be maintained, laser grading shall maintain a constant cross slope and positive drainage shall be maintained across the width of the field and track.

I certify that the proposed scope of work, as presented on March 8, 2019, can be completed without any further engineer design. It is recommended that a civil engineering inspection be completed during the grading, installation of the energy absorbing elastic layer and the installation of the synthetic turf system.

Sincerely,

A handwritten signature in blue ink that reads "Larry E. Wilke".

Larry E. Wilke, P.E.  
Senior Project Manager





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

**Marble Falls ISD  
Board of Trustees  
Agenda Item Information**

Meeting Date:		
Meeting Type: Regular Meeting Special Meeting/Workshop Hearing	Agenda Placement: Public Hearing Information Items Presentation/Discussion Items Consideration Items Consent Agenda	
Date Submitted:		
Subject:		
Executive Summary:		
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:		
Submitted By:		
Board Approval Required:    Yes    No		

# MARBLE FALLS ISD PURCHASE REQUISITION

Fill in necessary fields. Consult your campus secretary for required fields.

Group:	Fiscal Year:	2018-2019	PO#:
Description:	Vendor:	Phone:	Date Entered:
Address:	Fax:	Batch #:	Date Attachments Sent to Bus. Off.:
		Date:	Ship Via:
		Due Date:	Ship Date:

Merchandise/ Narrative	Catalog Page #	Catalog #:	Line Description:	Qty:	Unit Measure:	Unit Cost:	Total Amount:
		MRT42LL/A	21.5-inch iMac with Retina 4K display: 3.0GHz	16		1,379.00	22,064.00
			Final Cut Pro	16		299.99	4,799.84
			Macally Full Size USB Wired Computer Keyboard	16		17.99	287.84
			Macally 3-Button Optical USB Wired Computer M	16		12.99	207.84
						-	-
						-	-
						-	-
						-	-
Subtotal						27,359.52	27,359.52
Less Discount							
Shipping & Handling							
Total						27,359.52	27,359.52

Notes: quite per. G. Brinky - MFLSD Technology Dept.

Account Code	Amount	Requestor:	Date:
199-11-6398.00-001-022000	27,359.52	Wayne Grumet	April 5, 2019
		Intermediate Approval:	Date:
		Final Approval:	Date:
			



**PAXTON/PATTERSON**

4141 W. 126th Street  
 Alsip, IL 60803  
 Phone: 877-243-8763 FAX: 708-594-1907

DATE: 3/13/2019  
 Quote is valid for 90 days

**TOTAL INVESTMENT SUMMARY**  
**Marble Falls Middle School STEAM Academy**  
**1511 Pony Circle Dr.**  
**Marble Falls, TX 78654**

<b>Description</b>	<b>Investment</b>
College and Career Ready Lab	47,735.00
College and Career Ready Expendables	1,371.40
Intro to Culinary Arts Optional Items	-
Orientation Package	No Charge
Lab Enhancement Package	-
72-0600 Paxton Content Learning Management System (see PCLMS tab)	2,800.00
Installation	2,600.00
Teacher Professional Development	2,400.00
<b>Investment Summary Total</b>	<b>\$56,906.40</b>

TERMS AND CONDITIONS

Prices quoted include delivery charges and **may or may not** include local sales tax. Sales tax must be added to your purchase order, if applicable.

- Please note: Installation and Teacher Professional Development are non-taxable items

Payment Terms: Net 30 days from date of invoice. Check payment should be sent to remit to address on the invoice, credit card payments will not be accepted.

Quote is valid for 90 days.

# **PAXTON/PATTERSON**

4141 W. 126th Street, Alsip, IL 60803  
(800) 631-0158

Marble Falls Middle School STEAM Academy  
1511 Pony Circle Dr.  
Marble Falls, TX 78654

## **One-Year Warranty Terms**

Valued Customer:

Thank you for purchasing Paxton/Patterson learning system. Your purchase includes warranty protection from defects in materials and workmanship when the learning system is used under appropriate educational conditions.

### **Key aspects of the warranty are:**

- Your warranty period starts when your lab is installed and ends one year later.
- Equipment which does not perform properly will be repaired or replaced with a new or remanufactured product. The replacement or repaired equipment remains under warranty for the balance of the original warranty period.
- If there are any integrated instructional unit guidebook pages which we modify due to an inaccuracy preventing student learning, those pages will immediately be reprinted and mailed to you.
- Please contact our learning systems technical support staff at 800.631.0158 for equipment/software matters.

### **Technical Support:**

- Your lab instructor will attend our four day professional development program – New Beginnings. We know that your instructor will have questions about the learning system after completing New Beginnings. Our technical support staff is available from 7:00 to 5:00 central time, five days a week and our staff is also available by appointment at other times to provide technical support to your instructor. Except in unusual situations, technical support can be quickly and conveniently provided via telephone conversations and use of our “desktop streaming” support technology.
- Additionally, our technical support staff is ready to assist your school/district IT personnel whenever there are questions about the PCLMS or other learning system aspects.
- We have consistently found that when an additional instructor is assigned to a lab or a new instructor is hired to replace the instructor who has attended New Beginnings, the new instructor definitely needs to complete New Beginnings just as your first instructor did. If an instructor is hired near or after the start of the school year preventing attendance at New Beginnings, we will offer training options for the new instructor. New instructors need considerably more formal training to effectively use the learning system lab than our tech support staff can provide via telephone.

**Exclusions** to this warranty include: (a) consumable materials like paints and finishes, batteries, sanding materials and worksheets, (b) failure caused by misuse or accidents, (c) theft or “mysterious” disappearance, (d) normal wear and tear on guidebooks, textbooks, videos and other printed materials, and (e) damaged or lost computer software – CDs and diskettes. In conformity with your district’s copyright law compliance policy we recommend that back-up copies be made of all computer software (CDs and diskettes) exclusively for use in the learning system covered by this warranty.

Best regards,  
Nate Schuessler  
Vice President, Learning Systems

## PAXTON/PATTERSON (PP) LEARNING SYSTEMS CONTENT DELIVERY

PP will provide the Paxton Content Learning Management System for 60 months with a service start date to be set after installation by PP.

During the 60 months PP will:

- Provide access to Learning System content from modern browsers.
- Provide updates to Learning System content and to the Paxton Content Learning Management System.

During the 60 months it is likely that some 3<sup>rd</sup> party providers of equipment, software, and licensed assets included in your original purchase will upgrade their products. It is impossible to predict the scope of these potential future upgrades by 3<sup>rd</sup> party sources, therefore PP has not “built in” any costs for those items in the original purchase prices.

- PP will advise you well in advance of the upgrade potentials being available, advising you of how the upgrade will enhance student learning and the costs of the upgraded equipment, software and/or licensed assets.
- Most importantly, no purchase of upgraded equipment, software or licensed assets will be required at any time during the 60 months – because the PP learning system originally purchased will be supported during the entire 60 months.
- The only time that it may be necessary to upgrade equipment, software or licensed assets is if your school chooses to upgrade to a newer operating system that is not compatible with the originally purchased 3<sup>rd</sup> party equipment, software, or licensed assets.

**PAXTON/PATERSON**

4141 W. 126th Street

Alsip, IL 60803

Phone: 877-243-8763 FAX: 708-594-1907

Marble Falls Middle School STEAM Academy

Investment

Projection

**Installation & Professional Development**

Qty	Stock No.	Description	Explanation	Price	Extension
1	64-3428	Installation	each classroom	2,600.00	2,600.00
	64-3440	Installation for less than full labs	each classroom	1,400.00	-
	64-3440	Installation for CAREERplus2	Addition to existing CP lab	1,400.00	-
1	64-3430	Professional Development (NC)	CCR/CP/HSC , First Time Attendee (lodging, meals, & ground transportation included)	2,400.00	2,400.00
	64-3431	Professional Development (NC)	CCR/CP/HSC , Replacement Instructor (lodging, meals, & ground transportation included)	1,800.00	-
	64-3450	Professional Development (CA)	HSC/CCR, First Time Attendee (lodging, meals, & ground transportation included)	3,000.00	-
	64-3455	Professional Development (CA)	HSC/CCR, Replacement Instructor (lodging, meals, & ground transportation included)	2,400.00	-
	64-7005	Professional Development (CA/TX)	HSC/CCR, First Time Attendee (lodging, meals, & ground transportation not included)	1,400.00	-
	64-3433	Professional Development (CA/TX)	HSC/CCR, Replacement Instructor (lodging, meals, & ground transportation not included)	1,000.00	-
<b>Installation &amp; Professional Development Total</b>					<b>5,000.00</b>

\*\*Training prices do not include transportation to or from training locations.

**PAXTON/PATERSON**

4141 W. 126th Street

Alsip, IL 60803

Phone: 877-243-8763 FAX: 708-594-1907

Marble Falls Middle School STEAM Academy  
Investment  
Projection**College and Career Ready Lab**

Units with an asterisk\* require a PC

Blue highlighted units do not have consumables

Yellow highlighted units &lt;\$20/yr in consumables

Integrated Instruction Unit Name	Qty	Stock No.	Price	Extension	Career Clusters	Schools
Alternative Energy	1	72-5070	3,295.00	3,295.00	AG, STEM	
Audio Communications*		72-3538	3,795.00	-	Arts/AV/Communications	
Biomedical Engineering		86-0006	3,900.00	-	STEM, Health Science	
Biotechnology R&D		86-0002	3,800.00	-	Health Science	
Blueprint Reading Skills		74-0030	1,500.00	-	Architecture/Construction	
Clinical Lab Practices		86-0000	3,300.00	-	Health Science	
Computer Aided Drafting (CAD)* (requires school to provide DeskJet Printer)	1	72-3542	2,395.00	2,395.00	Architecture/Construction	
Computer Graphics & Animation*		72-3548	2,795.00	2,795.00	Arts/AV/Communications	
Dentistry		86-0004	3,400.00	-	Health Science	
Design & Marketing		72-5501	2,895.00	-	Marketing/Sales/Service	
Digital Manufacturing*	1	72-3595	4,995.00	4,995.00	Manufacturing, STEM	
Digital Music*		72-3550	2,795.00	-	Arts/AV/Communications	
Drywall Skills		74-0010	2,600.00	-	Architecture/Construction	
Electrical Skills		74-0012	2,700.00	-	Architecture/Construction	
Electricity & Electronics	1	72-3552	5,195.00	5,195.00	Manufacturing, STEM	
Emergency Medical Technician		86-0008	3,500.00	-	Health Science	
Energy & Power	1	72-3554	3,495.00	3,495.00	STEM, Transportation	
Engine/Stand/Tote Tray Combination (1 required for addl classes after the initial 1)	1	72-0052	385.00	385.00	STEM, Transportation	
Environment & Ecology		72-3556	2,495.00	-	AG, STEM	
Environmental Health & Safety		86-0010	2,900.00	-	Health Science	
Flight Technology*	1	72-3558	3,395.00	3,395.00	STEM, Transportation	
Forensic Science* (middle school level)		72-5068	3,795.00	-	STEM, Law & Public Safety	
Forensics* (high school level)		86-0012	3,400.00	-	Health Science	
Hand Tool Skills		74-0018	1,900.00	-	Architecture/Construction	
Health & Fitness*		72-3540	3,295.00	-	Human Services	
Health Information Management*		86-0014	1,900.00	-	Health Science	
Home Maintenance Fundamentals		72-5504	2,995.00	-	Architecture/Construction	
Home Maintenance Systems		72-5524	3,695.00	-	Architecture/Construction	
Hospitality & Tourism Management		72-5505	2,895.00	-	Hospitality & Tourism	
Intro to Child Development		72-5506	2,395.00	-	Human Services	
Intro to Computer Science	1	72-5507	2,295.00	2,295.00	Information Technology	

Intro to Culinary Arts			72-5500	3,995.00	-	Hospitality & Tourism
Intro to Engineering & Design (avail June 2019)			72-5528	2,995.00	-	STEM
Intro to Health Science Careers (avail June 2019)			86-0550	3,295.00	-	Health Science
Intro to Health Science Foundations (avail June 2019)			86-0552	2,795.00	-	Health Science
Laser Technology			72-3562	3,995.00	-	STEM
Lifetime Nutrition & Wellness			72-5502	2,895.00	-	Human Svcs, Hospitality
Material Processing			72-3564	7,995.00	-	Manufacturing, Construction
Mechanisms	1		72-3566	4,395.00	4,395.00	STEM, Transportation
Medical Imaging*			86-0016	3,100.00	-	Health Science
Mental Health			86-0018	1,900.00	-	Human Services
Nursing			86-0020	3,500.00	-	Health Science
Ophthalmology			86-0022	3,700.00	-	Health Science
Personal Finance			72-5503	1,595.00	-	Finance
Pharmacology			86-0024	2,700.00	-	Health Science
Pneumatics			72-3568	5,695.00	-	STEM, Transportation
Research & Development	1		72-3570	5,095.00	5,095.00	STEM, Manufacturing
Robotics*	1		72-3572	2,995.00	2,995.00	STEM, Manufacturing
Robot, Lego Mind Storm EV3 Core Set (1 required for addl classes after the initial 2)	1		72-0825	610.00	610.00	STEM, Manufacturing
Speech Therapy			86-0026	2,300.00	-	Health Science
Sports Medicine			86-0028	3,700.00	-	Health Science
Structural Engineering*	1		72-3574	6,395.00	6,395.00	STEM, Construction
Therapeutic Services			86-0030	3,600.00	-	Health Science
Veterinary Medicine			86-0032	3,500.00	-	AG, Health Science
Video Production			72-3576	5,995.00	-	Arts/AV/Communications
Virtual Architecture*			72-3578	2,195.00	-	Architecture/Construction
Wall Framing Skills			74-0036	2,800.00	-	Architecture/Construction
				<b>Total</b>	<b>47,735.00</b>	
				<b>Total # IU</b>	<b>12</b>	
				<b>Total # Students Served</b>	<b>24</b>	

All College and Career Ready Units require a networked printer for general printing.

### 3D Scanning/Printing Enhancement Items

Description	Qty	Stock No.	Price	Extension
3D Scanning/Printing Package (Includes: 3D Scanner, 3D Printer, Mold Putty)		86-0250	2,295.00	-
3D Printer		72-1037	1,599.00	-
Mold Putty, 300g		76-0371	23.60	-
3D Scanner		76-0381	735.00	-
<b>Scanning/Printing Package Total</b>				<b>0.00</b>

**Intro to Culinary Arts Optional Items**

Description	Qty	Stock No.	Price	Extension
Refrigerator w/Freezer		72-1019	235.00	-
Oil, Glo Germ		82-0013	13.70	-
Micro Convection Oven		82-1378	815.00	-
Glo-Germ Powder		82-1534	13.30	-
Soap, Hand, Antibacterial		86-0059	6.40	-
Flashlight, 21 LED, Ultra Violet		86-0510	25.75	-
Demonstration Table		63-0602	1,525.00	-
Demonstration Table Mirror		63-0603	98.00	-
<b>Intro to Culinary Arts Optional Items Total</b>				<b>0.00</b>



April 15, 2019

Project Lead The Way, Inc.  
 3939 Priority Way South Dr., Suite 400  
 Indianapolis, IN 46240



## Summary

PLTW Gateway (6-8) \$24,881.25

### Automation and Robotics

<b>Equipment and Supplies</b>	<b>\$22,931.25</b>
<b>Professional Development Registration</b>	<b>\$1,200.00</b>
<b>Annual Participation Fee</b>	<b>\$750.00</b>

Equipment and Supplies Subtotal	\$22,931.25
Professional Development Subtotal	\$1,200.00
Participation Fee Subtotal	\$750.00
<b>Total</b>	<b>\$24,881.25</b>

Required Items Removed from List 11

**Attention: To avoid potential duplication of orders, and decrease the leadtime to obtain your supplies, we kindly ask that you return a copy of the approved purchase order to the requester to complete the order via the Store in myPLTW. Please do not mail/email/fax the order to PLTW.**

### Equipment and Supplies

Equipment and Supplies Total is calculated based on the details you provided about your classes and the items selected.

### Pricing

Prices are subject to change. Annual program participation and professional development registration fees are excluded from this total. Professional development fees may vary by state. Standard shipping and processing charges are included for items available for order directly through PLTW. PLTW reserves the right to pass on additional shipping charges for orders shipped outside of the lower 48 contiguous states (i.e. Hawaii, Alaska, and Puerto Rico).

### Sales Tax

Sales tax (where applicable) is not included in the total.

### Computer Hardware

Note that costs for computers, tablets, printers, and projectors are not included in the total. Refer to [PLTW's Computer Specifications](#) for details.

April 17, 2019

Project Lead The Way, Inc.  
3939 Priority Way South Dr., Suite 400  
Indianapolis, IN 46240



## Summary

### PLTW Gateway (6-8)

\$22,931.25

#### Automation and Robotics

\$22,931.25

#### Durable

\$22,517.75

Item	Item Price	Qty	Total Price
Back Saw, 14 inch, 12-14 teeth per inch	\$15.00	6	\$90.00
Bastard-Cut Mill File, 8 inch	\$8.25	2	\$16.50
Butter Knife, metal	\$1.00	6	\$6.00
Classroom Storage Cabinet - 18 x 36 x 72	\$465.00	1	\$465.00
File handle, 5 pack	\$11.00	1	\$11.00
Meter Stick, Wood, Case of 6	\$22.00	2	\$44.00
Miter Box, clamping	\$16.00	6	\$96.00
Multipurpose Wire Stripper	\$6.25	13	\$81.25
Needle Nose Pliers, 5 inch, 5 pack	\$25.00	3	\$75.00
Paper Cutter, 12 inch cut length	\$32.00	1	\$32.00
Storage Organizer (for small hardware), 4 pack	\$62.00	2	\$124.00
VEX Gateway Kit	\$1,125.00	19	\$21,375.00
VEX Performance Tool Kit	\$51.00	2	\$102.00
<b>Consumable</b>			<b>\$413.50</b>
Item	Item Price	Qty	Total Price
3M Temflex Vinyl Electrical Tape, 5 pack	\$6.50	1	\$6.50
Cotton string, 400 ft.	\$4.50	4	\$18.00
Masking tape, 1 in x 60 yd, 9 pack	\$19.00	3	\$57.00

PLTW Gateway Notebook - 30-pack	\$99.00	3	\$297.00
Powder-Free Disposable Nitrile Gloves, Medium, 100 pack	\$8.75	4	\$35.00

Equipment and Supplies Subtotal \$22,931.25

**Total \$22,931.25**

Total for Items Available in myPLTW Store \$22,925.25

Attention: To avoid potential duplication of orders, and decrease the leadtime to obtain your supplies, we kindly ask that you return a copy of the approved purchase order to the requester to complete the order via the Store in myPLTW. Please do not mail/email/fax the order to PLTW.

## PLTW Product List

## Quote

Address	PLTW 3939 Priority Way South Drive Suite 400 Indianapolis IN 46240	Created: 04/17/2019 Expires: 07/16/2019
Website	mypltw.org	
Payment accepted	Credit Card and Purchase Order	
Discount code		

Item	Item #	Item Price	Qty	Total Price
3M Temflex Vinyl Electrical Tape, 5 pack	44PWEE335	\$6.50	1	\$6.50
Back Saw, 14 inch, 12-14 teeth per inch	44PWG108	\$15.00	6	\$90.00
Bastard-Cut Mill File, 8 inch	102420	\$8.25	2	\$16.50
Classroom Storage Cabinet - 18 x 36 x 72	180-6112	\$465.00	1	\$465.00
Cotton string, 400 ft.	470092-822	\$4.50	4	\$18.00
File handle, 5 pack	102973	\$11.00	1	\$11.00
Masking tape, 1 in x 60 yd, 9 pack	564931	\$19.00	3	\$57.00
Meter Stick, Wood, Case of 6	470232-418	\$22.00	2	\$44.00
Miter Box, clamping	44PWEE2545	\$16.00	6	\$96.00
Multipurpose Wire Stripper	44PWEE1741	\$6.25	13	\$81.25
Needle Nose Pliers, 5 inch, 5 pack	44PWEE329	\$25.00	3	\$75.00
PLTW Gateway Notebook - 30-pack	PLTWMSSEN-30	\$99.00	3	\$297.00
Paper Cutter, 12 inch cut length	44PWP136	\$32.00	1	\$32.00
Powder-Free Disposable Nitrile Gloves, Medium, 100 pack	470222-548	\$8.75	4	\$35.00
Storage Organizer (for small hardware), 4 pack	44PWEE323	\$62.00	2	\$124.00
VEX Gateway Kit	270-1920	\$1,125.00	19	\$21,375.00
VEX Performance Tool Kit	276-1645	\$51.00	2	\$102.00

**PLTW Product List Total \$22,925.25**

To place an order for the items included on this PLTW Product List, [visit the myPLTW Store](#).  
Saved lists expire 90 days after being created or at the end of each calendar year.

Don't have a myPLTW account? To be added to your organization's account, please contact your Program Coordinator or the PLTW Solution Center at [solutioncenter@pltw.org](mailto:solutioncenter@pltw.org) or 877.335.PLTW.

**Attention: To avoid potential duplication of orders, and decrease the leadtime to obtain your supplies, we kindly ask that you return a copy of the approved purchase order to the requester to complete the order via the Store in myPLTW. Please do not mail/email/fax the order to PLTW.**

### Equipment and Supplies

Equipment and Supplies Total is calculated based on the details you provided about your classes and the items selected.

### Pricing

Prices are subject to change. Annual program participation and professional development registration fees are excluded from this total. Professional development fees may vary by state.  
Standard shipping and processing charges are included for items available for order directly through PLTW. PLTW reserves the right to pass on additional shipping charges for orders shipped outside of the lower 48 contiguous states (i.e. Hawaii, Alaska, and Puerto Rico).

### Sales Tax

Sales tax (where applicable) is not included in the total. Sales tax will be included at checkout.

### Computer Hardware

Note that costs for computers, tablets, printers, and projectors are not included in the total. Refer to [PLTW's Computer Specifications](#) for details.

### PLTW Returns Guidelines

Please visit our [Additional Resources](#) page to review Project Lead The Way's guidelines related to product warranties, handling of shipping errors, receipt of damaged products, and the return of equipment.

## Any Local Supplier Product List

Address	Any Local Supplier			
Website				
Payment accepted	Credit Card			
Discount code	n/a			
Item	Item #	Item Price	Qty	Total Price
Butter Knife, metal	LS262	\$1.00	6	\$6.00
<b>Any Local Supplier Product List Total</b>				<b>\$6.00</b>

Attention: To avoid potential duplication of orders, and decrease the leadtime to obtain your supplies, we kindly ask that you return a copy of the approved purchase order to the requester to complete the order via the Store in myPLTW. Please do not mail/email/fax the order to PLTW.